

DOCUMENT RESUME

ED 059 381

VT 014 696

AUTHOR Somers, Gerald G., Ed.
TITLE A Review of Industrial Relations Research, Volume II.
INSTITUTION Wisconsin Univ., Madison. Industrial Relations Research Inst.
PUB DATE Oct 71
NOTE 238p.
AVAILABLE FROM Industrial Relations Research Association, 7114 Social Science Building, University of Wisconsin, Madison, Wis. 53706 (\$5.00)
EDRS PRICE MF-\$0.65 HC Not Available from EDRS.
DESCRIPTORS *Collective Bargaining; Foreign Countries; *Industrial Relations; Labor Legislation; *Personnel Management; Personnel Policy; *Public Policy; *Research Reviews (Publications)

ABSTRACT

This report, with Volume I previously released, appraises selected research in industrial relations since 1956-57. Experts analyze the character and contributions of the research output in their areas of expertise. Contents include: (1) "Public Policy and Labor-Management Relations" by Benjamin Aaron and Paul Seth Meyer, (2) "Manpower Research and Manpower Policy" by Garth L. Mangum, (3) "Collective Bargaining Trends and Patterns" by James L. Stern, and (4) "Industrial Relations in Western Europe and Canada" by John Crispo. A related document, Volume I, is available as ED 047 401. (GEB)

INDUSTRIAL RELATIONS RESEARCH
ASSOCIATION SERIES

ED 059381

A REVIEW OF INDUSTRIAL RELATIONS RESEARCH

Volume II

Benjamin Aaron &
Paul S. Meyer
John Crispo

Garth L. Mangum
James L. Stern

VT014696

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**INDUSTRIAL RELATIONS RESEARCH
ASSOCIATION SERIES**

**A REVIEW OF
INDUSTRIAL RELATIONS
RESEARCH**

Volume II

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**A REVIEW OF INDUSTRIAL RELATIONS RESEARCH,
Volume II**

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First Edition

Library of Congress Catalog Card Number: 73-133834

PRICE \$5.00

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INDUSTRIAL RELATIONS RESEARCH ASSOCIATION SERIES
October 1971, No. 5
Annual Subscription \$10

Published seven times yearly: May, *Proceedings of Annual Winter Meet-
ing*; August, *Proceedings of Annual Spring Meeting*; October, *Annual
Research Volume* (or *Directory* every sixth year in lieu of the research
volume); March, June, September, December, *IRRA Newsletter* (issued
quarterly). Gerald G. Somers, Editor; David B. Johnson, Secretary-
Treasurer; Mrs. Elizabeth S. Gulesserian, Executive Assistant.

Inquiries and other communications regarding membership, meetings,
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INDUSTRIAL RELATIONS RESEARCH ASSOCIATION
Social Science Building, University of Wisconsin
Madison, WI 53706 U.S.A. Telephone 608/262-2762

Second class postage paid at Madison, WI

Printed by R. F. Colwell Printing Corp., Champaign, IL 61820

Preface

Research in industrial relations has continued to flourish and change since the IRRA's last review volumes in 1956-57. New journals devoted to literature in the field have joined an already impressive list, and research reports, monographs and text books have added significantly to industrial relations libraries.

In keeping with its charter for the "encouragement, reporting and critical discussion of research," the Industrial Relations Research Association's Executive Board felt that the Association's special research volumes in 1970 and 1971 should be devoted to an appraisal of the research since our last review. Outstanding experts in the field were asked to make in-depth analyses of the character and contributions of the research output in their areas of expertise. In addition to the chapters included in this volume, four chapters were presented in Volume I, published last year: Labor Force and Labor Markets by Herbert S. Parnes, Wages and Benefits by E. Robert Livernash, Organizational Behavior and Personnel Relations by George Strauss, and Union Growth, Government and Structure by Woodrow L. Ginsburg. Together, the two volumes cover the major areas normally included in the Industrial Relations field.

Members of the IRRA's Executive Board served as an editorial review panel for the volumes, and other specialists also reviewed the manuscripts and made helpful comments and suggestions. In addition to those listed in the preface to Volume I, we wish to acknowledge the assistance of Douglass V. Brown, Massachusetts Institute of Technology; Jack Barbash, David B. Johnson and Everett Kassalow, University of Wisconsin; George Hildebrand, Seymour Brandwein and Howard Rosen, U.S. Department of Labor; Martin Wagner, University of Illinois; Thayne Robson, University of Utah; and Sar Levitan and Lowell Glenn, National Manpower Advisory Task Force.

The help of Elizabeth Gulesserian, the IRRA's Executive Assistant, is also gratefully acknowledged.

GERALD G. SOMERS
Editor, IRRA

Madison, Wisconsin
June 1971

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Public Policy and Labor-Management Relations

BY BENJAMIN AARON AND PAUL SETH MEYER
University of California, Los Angeles

A review of research in the area of public policy and labor-management relations presents certain difficulties peculiar to the subject. Most of the published material is by lawyers and law professors, whose writings tend to assume the form of description and detailed analysis of selected statutory provisions and judicial or administrative decisions, rather than the development of general theories based on empirical studies. Moreover, in the case of legal scholarship in this country, tradition favors the publication of law review articles and occasional essays, rather than books. There are over 100 law journals or reviews, published by law schools throughout the country on a monthly or quarterly basis, in which articles on the subject of this essay may have appeared. The same likelihood exists in respect of an almost equally large number of bar association publications and a few industrial relations and arbitration journals. Finally, some of the most significant writings have taken the form of papers presented at conferences and symposia devoted to labor relations law and industrial relations, or of reports by congressional committees or private commissions.

The sheer magnitude of the published material has forced us to place a number of purely arbitrary limitations on the scope of our own review. Thus, we have concentrated on the relatively few books and reports devoted to the subject, signed articles in a representative group of leading law reviews, essays in the proceedings of labor law and industrial relations conferences that are held annually, and miscellaneous reports. Unavoidably, we have missed completely or have had to pass over a large number of articles and most of the anonymous, but often excellent, student notes and comments in the law reviews.

There are also problems in defining the scope of the subject matter to be covered. The boundaries between labor relations law

and such related topics as collective bargaining and internal union affairs are indistinct and tend to overlap. In deciding what topics to exclude from this essay we have sought generally to avoid covering related matters discussed by Woodrow Ginsburg in Volume I of this series¹ and by Professor James Stern in the present volume.²

Scope of this Essay

In a series of five lectures, delivered at the University of California, Los Angeles, in November-December, 1959, and published the following year under the title, *Law and the National Labor Policy*,³ Archibald Cox singled out the four principal concerns of national labor policy: union organization, negotiation of collective bargaining agreements, administration of labor agreements, and internal union affairs. By that time Congress had enacted the last of the four statutes upon which the "national labor policy," if such it can be called, is based: the Norris-La Guardia (Anti-Injunction) Act of 1932;⁴ the National Labor Relations (Wagner) Act of 1935;⁵ the Labor Management Relations (Taft-Hartley) Act of 1947;⁶ and the Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959.⁷ During the ensuing decade, public policy debates continued to be concentrated largely on the areas cited by Professor Cox. As always, attention tended to center on the National Labor Relations Board (NLRB). The great bulk of published material on labor-management relations in the 1960's deals with the structure, functions, policies, or procedures of the NLRB.

The one wholly new instrument of federal public policy in labor-management relations forged in the 1960's was our first national fair employment practices statute—Title VII of the Civil Rights Act of 1964.⁸ Although not directed primarily at collective dealings between employers and unions, this law has had a profound impact on labor-management relations, the full effect of which is as yet only dimly perceived. In the period since its enactment Title VII and the functions, policies, and procedures of the Equal Employment Opportunities Commission (EEOC), which administers it, have been the subject of an extensive and rapidly growing corpus of scholarly work.

Another new area of labor-management relations—collective

bargaining in the public sector—developed with phenomenal speed in the 1960's, and stimulated a large amount of research, much of which took the form of reports and recommendations by study commissions to federal, state, county, and municipal authorities. At the end of the decade, however, the nation had not one but many public policies on this subject: labor-management relations at the federal level were governed by an Executive Order⁹ and by the terms of the Postal Reorganization Act,¹⁰ while state, county, and municipal employees were regulated by a number of widely varying statutes and ordinances, or simply by the common law.¹¹ The subject of collective bargaining in the public sector is dealt with in Chapter 1 of this volume, however, and will not be discussed further in this essay.

Several other areas of labor-management relations, about which there had been almost continuous concern for the past 20 years, experienced important new developments in the 1960's. Collective bargaining under the amended Railway Labor Act of 1934¹² continued to deteriorate; a series of crises created by threats of national rail strikes resulted in the first federal statute directing compulsory arbitration in a rail dispute¹³ and produced renewed interest in a wholesale revision of several federal labor relations statutes. An upturn in major strike activity in the latter part of the decade gave rise to yet another review by government officials, practitioners, and scholars of LMRA and RLA procedures for settling emergency disputes. Finally, the Supreme Court decisions and opinions in the *Steelworkers Trilogy* of 1960¹⁴ not only marked the adoption of voluntary arbitration as the preferred instrument of national labor policy for the settlement of disputes over rights, but also led to an eventual confrontation between seemingly conflicting policies in the Norris-La Guardia and Taft-Hartley Acts.¹⁵ The efforts of the Supreme Court and of the lower federal courts and the state courts to deal with that problem prompted a substantial body of scholarly commentary.

The application of the antitrust laws to collective bargaining generally and to the self-help activities of unions in particular had apparently stabilized in the 1940's. The Supreme Court had held in 1941, in a controversial application of the Sherman¹⁶ and Clayton¹⁷ Antitrust Acts and the Norris-La Guardia Act to

the picketing and boycotting activities against an employer by one of two unions engaged in a jurisdictional dispute, that acts not enjoinable under Norris-La Guardia were also immune to prosecution for violation of the antitrust laws.¹⁸ And in 1945 the Court held that "the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups."¹⁹ These two decisions highlighted the era that witnessed, in the words of Professor George H. Hildebrand, "the triumph of the doctrine of licit monopoly in labor markets."²⁰

In 1965, however, the whole question of the application of the antitrust laws was raised again in two landmark cases.²¹ The lower courts, as well as practitioners and scholars are still wrestling with the import of the five opinions accompanying those two decisions.

Within the limitations of allotted space and the self-imposed ones previously noted, we shall devote the remainder of this essay to a review and commentary of the published research in the areas outlined above.

Maintaining an Overview

We have found only one article published during this period that sought to develop a theory that would identify variables of sufficient generality to account for the timing and character of significant developments in our labor relations laws.²² Writing in 1961, Sanford Cohen rejected the "property-oriented" explanations of earlier developments in the law by Elias Lieberman²³ and Professor Charles Gregory,²⁴ on the ground that economic determinism, while not plainly wrong, is inadequate to explain more recent developments. Professor Cohen offered, instead, the following hypothesis:

[T]he character of labor relations law is a resultant of the prevailing ideology of property rights and the degree of access to political power enjoyed by private power blocks. Thus, when the group favored by the property ideology is also the group that enjoys favorable conditions of access to political power, labor law . . . will reflect the interests of the fortunately situated group; when the property ideology and the control of political power

change concurrently and sympathetically, the law will change so as to reflect the interests of the emerging power group; when the shift in ideology is not associated with a concurrent shift in political power, the law will change minimally unless and until the new ideological orientation acquires the momentum to reach the effective source of political power.²⁵

Having tested this hypothesis by reference to historical changes in labor relations law from the conspiracy cases to the enactment of the LMRDA, Cohen concluded that important turns in labor relations law are likely to result from abrupt and significant ideological and political reorientations, rather than from the gradual evolution of social forces.

Contrasting his "analytical framework" with Professor Galbraith's theory of countervailing power,²⁶ Cohen pointed out that economic power blocs do not necessarily or automatically produce their own restraints; when they do, it is usually only after a time lag or uncertain duration. Galbraith's theory is thus weak in the sense that it cannot account for the *timing* of changes in government policy. Cohen's theory, on the other hand, suggests that countervailing union power against employers, aid by government support, could not be expected to develop until some serious social damage, such as the depression of the 1930's, created the necessary propitious conditions.

The great bulk of published material on labor-management relations in the last decade dealt with the NLRB. A few studies, however, offered a perspective of the entire field. Of these, Cox's monograph, *Law and the National Labor Policy*, is outstanding. It combined a discussion of past developments with analysis of the basic trends to be expected from legislation, judicial action, and administrative applications.

After surveying the four statutory cornerstones of the national labor policy, which he saw as a response to the development of labor unionism and its consequences, Cox questioned whether "business unionism's 'more and more and more' [is] a sufficient aspiration for the labor movement," and whether "any but a democratic union [can] advance the ideals of individual responsibility, equality of opportunity, and self-determination."²⁷ He

concluded that the answers to these questions "will ultimately come from within organized labor."²⁸

In his chapter on public policy toward union organization Cox noted that the struggle for union organization had not been completed; that collective bargaining was no longer spreading; that distribution of union strength was very uneven; and that although part of American industry had accepted collective bargaining, there remained "an organized and determined opposition."²⁹ Conceding that the weakening government protection for union organization and the added restrictions upon picketing and secondary boycotts introduced by the LMRA and the LMRDA had contributed to the slowing trend in labor organization, Cox cautioned against "exaggerating the blame to be laid upon public policy for the present low state of the labor movement."³⁰ Equally important, he thought, were the changing frontiers of union organization from blue-collar to white-collar workers and from the North and West to the South, the growth of a subtler but more organized management opposition to unions, the general improvement in wages and conditions of labor, and the impact of technology and the changing character of the work force. Then, returning to his initial theme, Cox again suggested that the labor movement's failure to grow and the decline of its prestige were partly attributable to its own loss of idealism.

Cox's chapter on the role of law in the administration of labor agreements, written after *Lincoln Mills*,³¹ but before the *Steelworkers Trilogy*, anticipated the path taken by the Supreme Court in the latter three cases. He concluded that if the law were to meet the needs of men, "the principles determining legal rights and duties under collective . . . agreements should not be imposed by the courts from above because of precepts learned in other contexts"; rather, "the governing principles must be drawn out of the institutions of labor relations and shaped to their needs."³²

Finally, Cox addressed himself to the public interest in internal union affairs. He observed that law can help union members enforce the fiduciary duties of elected officers, can insure their right to participate actively in union affairs without undue loss of political freedom, and can protect the personal liberties of individual workers against improper union pressure. Cox also pointed out,

however, that law cannot compel workers to assert their rights, nor can it create the spirit of self-government or restore a sense of mission. He concluded that the future of the labor movement "probably depends less upon the course of legal developments than upon its capacity to feel and express the highest ideals of the community."³³

At the New York University's 1960 Conference on Labor, Joseph Shister also speculated on collective bargaining developments in the 1960's. He saw little likelihood of any large-scale growth in union organization, partly because of a lack of legislation favorable to unionism, and partly because of the relatively low propensity of white-collar workers to organize. At the same time, he pointed out that the economic power of established unions could remain high while their political power, as well as their growth, declined. Professor Shister also correctly foresaw, among other things, a "growing managerial resistance to union encroachment on managerial rights; . . . managerial efforts to whittle away so-called 'restrictive practices' . . .; mutual aid pacts among employers in the same industry to cover strikes against one or more members of the group; [and] greater cooperation among the relevant unions in coping with these pacts."³⁴

These and similar works provide a common framework for the many specific articles on selected topics produced in the decade. A more ambitious contribution to public discussion of the entire spectrum of national labor policy was a report by an independent study group, *The Public Interest in National Labor Policy*, published without endorsement by the Committee for Economic Development in 1961. Although reasoned and constructive in tone, the report sacrificed incisiveness to the felt need to reach a "general accord" of the participants.³⁵ Its series of generalized recommendations were presented almost without elaboration; readers were thus offered conclusions insufficiently buttressed by analysis.

Of the hundreds of books, articles, and reports dealing with public policy and labor-management relations that were written during the 1960's, three works, in addition to the one by Cox, seem to us to deserve special notice. The first of these was an article by Derek Bok on campaign tactics in NLRB elections.³⁶ In addition to presenting an exhaustive treatment of his topic,

Professor Bok provided a broad overview of problems of administrative application and judicial enforcement common to other fields of law. His study was also notable for its partial reliance on nonlegal research in the social sciences as a basis for some of his conclusions. Finally, the article seems to have had considerable impact on the thinking of the NLRB and to have inspired at least one important innovation in Board procedure and policy.⁸⁷

A more ambitious work was Philip Ross's book on the role of public policy in collective bargaining.⁸⁸ The book concentrated on the duty to bargain; and unlike any other major work during this period, was solidly based on a detailed review of legislative history and a substantial sample of empirical evidence. The result was a model of painstaking scholarship and reasoned judgment, which illuminated an area of the law that had been hopelessly obfuscated by others writing with an insufficient knowledge of the facts.

The third work, by Harry Wellington, was devoted primarily to a "search for theories which explain the relationship between the legal process and the political, economic, and social forces that combined ultimately to elevate collective bargaining to its present position" at the center of national labor policy, and to a detailed examination of selected problems "created for government by collective bargaining":⁸⁹ the major strike, the terms of settlement, union participation in management decisions, and unions in the political process. Professor Wellington's book, though characteristically challenging and elegantly written, is less satisfactory than those by Cox and Ross. The author's strictures against the role of the courts in enforcing collective agreements, for example, were based on a theoretical construct that has been largely disproved by actual events.⁴⁰ But some of Wellington's observations had greater validity. Among these was his warning that failure to devise means for controlling inflationary wage settlements in collective bargaining may eventually cause the public to turn against the entire system and destroy it. He suggested that the legal duty to bargain include a requirement that the parties discuss the application to the firm of government-determined wage-price guideposts, and that a federal commission be empowered to

intervene in major negotiations to express the concerns of government over the terms of settlement.

In retrospect it appears that none of the writers in the early years of the decade had the prescience to predict the development of organization and collective bargaining in the public sector in the latter 1960's, which came so rapidly as to amount to a virtual revolution. For example, the proceedings of New York University's annual conferences on labor, which have faithfully reflected changing interests and new developments in labor relations since 1948, contained no substantial discussion of labor relations in government and the nonprofit employment sector until 1967.

The National Labor Relations Act

A. FUNCTIONS AND PROCEDURES OF THE NLRB

The problem of efficiency in the administration of the NLRA was the subject of considerable research and critical writing in the 1960's. Early in 1960 an Advisory Panel, established by Senate resolution and chaired by Archibald Cox, issued a detailed report and recommendations on the organization and procedures of the NLRB.⁴¹ The report expressed great concern over the long delay in contested NLRB proceedings and over the "institutional approach to the decision of cases which tends to substitute bureaucratic redtape for the personal participation and responsibility of NLRB members."⁴² Its sharpest criticism, however, was reserved for the "repeated controversies between the Board and the General Counsel," which were said to have "hampered the administration of the act."⁴³ To eliminate the "hybrid compromise" of divided authority between the Board and the General Counsel, the Panel unanimously recommended abolition of the latter and substitution therefor of an Administrator, who would supervise field offices; issue complaints, investigate, and prosecute unfair labor practices; conduct all litigation; and handle all representation cases under orders of the Board. The proposed plan would also have given the Board limited review of the Administrator's decisions declining to issue complaints or dismissing petitions for investigation and certification of representatives.

In addition, the Panel recommended establishment of a special

trial examiners' panel with authority to order contested elections after hearing, but without prior reference to the Board; granting greater finality to trial examiners' reports; making injunctions more readily available against employers charged with unfair labor practices; adopting procedures to speed up case handling, conduct of oral arguments, and preparation of decisions and opinions; and revising procedures to reduce the time between making and enforcing Board orders.

It is unfortunate that this detailed and well-documented report, prepared by a group of distinguished scholars and by practitioners representing both labor and management, should have been virtually ignored by Congress and the public. The principal reason undoubtedly was the time of its release, which followed by only a few months the exhausting legislative and public debate preceding the enactment of the LMRDA amendments to the NLRA.

The NLRB's rule-making procedures were also vigorously criticized by Cornelius Peck.⁴⁴ Following up on an earlier recommendation by the American Bar Association⁴⁵ that the Board "should reconsider its view that its decisional policies on such matters as jurisdictional standards and contract-bar rules do not come within the rule-making requirements of the Administrative Procedure Act [APA],"⁴⁶ Professor Peck concluded that the Board's "view of its activities as involving only quasi-judicial functions, and not substantive rule-making, is obviously untenable."⁴⁷ He charged that the Board had clearly abandoned the quasi-judicial approach, and had engaged in substantive rule-making in establishing standards governing the exercise of its jurisdiction, promulgating its revised contract-bar doctrine, and other matters. Peck termed the Board's view that the rule-making process is not well adapted to its own role "patently unsound." Indeed, he said, that process was "exactly what the Board had used" in major areas of its work. He particularly condemned the Board's "*sub rosa* formulation of rules in the guise of ad hoc decisions."⁴⁸

These well-reasoned criticisms fell on deaf ears. In the *Excelsior* case,⁴⁹ decided five years later, the NLRB announced a new rule, to be applied prospectively, that an employer would be required to give to the Regional Director, prior to a representation election, the names and addresses of eligible voters, which list would then

be made available to all contestants in the election. This action was challenged in a subsequent case on the ground that the *Excelsior* rule had not been promulgated in accordance with the requirements of the APA. Although this challenge was rejected on other grounds, a majority of the Supreme Court made clear its disapproval of the Board's practice of promulgating rules in adjudicatory proceedings.⁵⁰

Delays in handing down decisions, caused in large part by constantly increasing caseloads, have plagued the NLRB from the start and were the object of considerable criticism in the 1960's. The Board's efforts to speed up its procedures in representation cases were reviewed in 1967 by Jay Siegel, a practicing attorney representing management. In his view, "the Board has failed to meet its obligations as an administrative agency in the twentieth century."⁵¹ Concluding that the Board's inability to meet its ever increasing caseload had led to a denial of adequate and fair procedures, he observed that "Administrative expediency is not a substitute for due process."⁵²

The magnitude of the Board's workload was indicated in its Thirty-third Annual Report, which revealed that in fiscal 1968 the Board had received 30,705 cases, almost double the 16,748 of a decade earlier.⁵³ In an address that same year, Member John Fanning referred to a "veritable litigation explosion" in the preceding 10 years.⁵⁴ He conceded that remedies, "however brilliantly developed and tailored to cure unfair labor practices, may be entirely irrelevant if too long delayed."⁵⁵ Referring to procedural changes designed to speed up the processing of cases, Fanning mentioned the development of precise jurisdictional standards and the delegation of authority to regional directors in representation cases. Contrary to Siegel, Fanning thought the delegation had "worked extremely well," and he suggested that "something similar would work well in complaint cases."⁵⁶ But the best way to deal with the workload problem, Fanning declared, "is not to get the cases," and he expressed agreement with the Board's policy of encouraging arbitration.⁵⁷

In any discussion of how to improve the Board's effectiveness the line between procedural reforms and changes in substantive policy inevitably tends to disappear. Our decision to discuss the

remaining changes in Board procedures and policies in the next section is, therefore, without any real significance, and is made only for purposes of convenience in presenting the material.

B. POLICIES

1. *Duty to Bargain*

As previously noted, the most solid study of Board policy during the 1960's was that made by Philip Ross.⁵⁸ In his book Professor Ross reviewed the development of public policies leading to the establishment of the duty to bargain;⁵⁹ described and analyzed the nature of the statutory requirement; examined the consequences and the effectiveness of that policy; and evaluated the merits of the substantial body of hostile opinion of the duty to bargain. In describing the impact of the statutory duty, Ross noted the paucity of empirical data, except those appearing in the statistical tables of the NLRB annual reports. He also concluded that insufficient attention had been given by Board critics to the large number of informal settlements of unfair labor practice cases. In his judgment the empirical evidence completely refuted the "almost unanimous consensus" that Section 8(a) (5) of the NLRA is meaningless and ineffective.⁶⁰ To the contrary, Ross's "empirical analysis of refusal-to-bargain changes" led him to conclude that the impact of the NLRB upon the individual firm had induced compliance with public policy in two intimately related ways; "first, by the imposition of sanctions, and second, by what has been called 'voluntary compliance.'"⁶¹

Dispassionately reviewing the evidence in the light of severe criticism of the concept of statutory duty to bargain by scholars and practitioners alike, Ross concluded that despite the obvious inadequacies of Board remedies against willful and determined violators, "the most important consequences of federal legislation in support of the principle of collective bargaining flows [sic] from the duty to bargain."⁶² The predictions of the critics went wrong, he found, because they were based on erroneous assumptions, especially those about employer behavior. Employers did not practice massive defiance, or engage in widespread evasion of their legal responsibilities; the machinery of the NLRA was not thwarted by the judiciary; and, most important of all, the standards of col-

lective bargaining established by the Board and the courts "proved over time to be workable, and employers and unions have appeared to adjust their behavior in consonance with the public policy without undue strain."⁶³

Despite his conclusions concerning the effectiveness of the statutory duty to bargain in achieving the purposes of the NLRA, Ross conceded that for the employer bent upon violating the law, "the game may very well be worth the candle"; for the reward frequently is abandonment of a plant by a union despite a bargaining order, because the union's strength has been exhausted. To support this observation he quoted figures from the General Counsel's Summary of Operations for fiscal 1962 showing that "barely half the discriminatees actually return to their jobs in formal cases, as compared to three-fourths for settled cases."⁶⁴

2. Effectiveness of Board Remedies

The question of the effectiveness of remedies generally under the NLRA was the subject of extensive discussion during the 1960's. It is not feasible in this essay to review more than a small number of the many articles, speeches, and reports dealing with this topic; accordingly, we have chosen as a representative sample the spectrum of views presented in a 1968 symposium on NLRB remedies in the *Wayne Law Review*. Opening the discussion, Theodore St. Antoine considered appropriate standards by which to judge Board remedies. After reviewing the various types of remedial orders customarily issued by the Board, Professor St. Antoine observed that the fashioning of effective remedies "is at least as much an art as a science."⁶⁵ Accordingly, he concluded with a brief reference to the following "practical considerations": (1) "Remedies should be equitable. They should take account of the economics and psychology of a situation, the reason for the statutory violation, the interests of innocent bystanders and other similar elements." (2) "As far as possible, NLRB orders should be tailored to suit the facts of each particular case. . . . Boilerplate . . . will almost inevitably blunt the drive for creative and flexible remedies." (3) "[F]uller and clearer rationalizations of the Board's decisions should be encouraged," for the NLRB "cannot police the whole of labor relations," and ultimately, compliance with the

Act "depends on the vast majority of unions and employers according at least minimal respect to the Board and its directives. . . . The ideal Board order . . . is an instrument of education as well as regulation."⁶⁶

Widespread dissatisfaction with Board remedies for refusals to bargain led increasingly to demands for the award of money damages against recalcitrant employers. This view was forcefully presented by two union attorneys, Stephen Schlossberg and John Silard. Asserting that the NLRB has permitted employers who refuse to bargain collectively in good faith "to profit at the expense of the wronged workers," the authors recommended "compensatory monetary remedies for delays occasioned by illegal refusals to bargain."⁶⁷ Under the prevailing system, they argued, the worker suffers financial injury, the wrongdoing employer is unjustly enriched, and others are thereby encouraged to break the law. In support of their own recommendation they contended that the proposed remedy is not conjectural, does not constitute dictation of contract terms, and is not punitive.

By way of response, Kenneth McGuinness, a management attorney, presented a sharply conflicting analysis of the wisdom and legality of this proposed remedy. He concluded that although delays in bargaining weaken unions, that fact alone does not justify adoption of the proposed remedy, particularly in light of the legislative history of the LMRA, court decisions holding that the Board lacks authority to issue awards in the nature of damages, and the compliance by most employers with bargaining orders. Moreover, McGuinness felt that the "thrust of the remedy is contrary to the Act's policies precluding government intrusion into the collective bargaining process."⁶⁸

A somewhat broader view of the remedies problem was taken by Congressman James O'Hara of Michigan and Professor Daniel Pollitt.⁶⁹ Citing evidence of widespread resistance to the NLRA through knowing discharge of union leaders, they concluded that the standard remedies of posting notices, awarding back pay, and reinstatement are often inadequate. Their suggestions for improving remedies centered on two points: elimination of delay and the issuance of stronger remedial orders. Regarding delays, the au-

thors endorsed various suggestions by the Cox Advisory Panel, a congressional subcommittee headed by Representative Roman Pucinski,⁷⁰ and others, including proposals that discharge cases be decided finally by NLRB regional directors "without review of precedential effect";⁷¹ that greater delegation of final authority be given to trial examiners; and that Board orders be made self-enforcing. In respect of stronger remedial orders, the authors supported suggestions by the Pucinski committee that "the 'knowing' commission of an unfair labor practice should be made penal, punishable like any other Federal crime";⁷² that repeated and willful violators of the NLRA be barred from government contract awards; and that Congress create a civil cause of action and authorize those knowingly and willfully discharged to recover double or triple damages, plus court costs and reasonable attorney fees, from an employer who repeatedly violates the law.

The last contribution to the symposium was by Sylvester Petro, a self-described "disinterested observer," who once again expounded his now familiar thesis that the NLRB should be abolished. In brief, Professor Petro's reasons were that the Board has for many years substituted its own policies for those declared by Congress; that "in terms of public opinion," the Board "is imposing Wagner-Act policies in a Taft-Hartley era of law and opinion"; that the Board's substantive-law decisions are "signally deficient as guides to action"; and that the Board's procedures are "dilatatory, confused and marked by persistent denials of due process."⁷³

The Wayne symposium reflects another aspect of legal writing on public policy and labor-management relations that deserves at least a passing reference. Without intending any invidious comparisons, we wish simply to point out that much of the published work is by practitioners, or even scholars, who are completely committed to a given point of view and whose writings tend to be of a somewhat polemical character. This is hardly surprising, considering that few observers are both well informed and completely neutral on policy issues that are freighted with such an unusually heavy load of emotionalism. The nonexpert reader should be warned, however, to take particular note of the professional status and credentials of those who publish in this field.

3. *Changing Composition of the NLRB*

Inevitably, changing Board policies have been consistently related by some observers to the changing composition of the NLRB. This was particularly true of the so-called "Kennedy Board" in the 1960's. In 1962 Thomas Christensen surveyed the "new" NLRB and concluded that "it would be foolish to dispute the fact that Board policy has undergone major changes since the appointment of Chairman [Frank W.] McCulloch and Member [Gerald A.] Brown," and that "transfer of power to a new president, as in the past, has had a substantial impact upon the administration" of the NLRA.⁷⁴ After discussing recent reversals by the Board of precedents in representation cases and its new and revised precedents in unfair labor practice cases, Professor Christensen gave as his judgment that the current Board was not "deliberately misapplying the statute," but that continuation of its present pattern of decisions would allow "harsher judges" to build a case for the contrary proposition. He warned that decisions which, "erroneously or not, create a distinct impression that the Act is to be interpreted harshly as to one group and sympathetically as to another, can only lead . . . to another spate of badly drafted 'corrective' amendments."⁷⁵

At the New York University's conference on labor the following year, a portion of the program was again devoted to a critique of the NLRB. In presenting a "clinical view," Professor Donald Wollett, then a management attorney, refused to condemn the policy-making of the "Kennedy Board" as an isolated example of partisan political activity. After briefly reviewing the same types of criticism leveled against the Board during the Wagner Act days and the administrations of Presidents Truman and Eisenhower, Wollett concluded "that any given political regime can reasonably be expected to appoint members whose predilections, backgrounds, and social outlooks are such that decisions on close questions will tend to be compatible with administration policies and interests."⁷⁶ To combat this tendency he suggested either vesting unfair labor practice jurisdiction in the federal courts or, preferably, giving Board members terms of 10 years or longer, requiring them to be lawyers, and following selection procedures analogous to those employed in appointing federal judges.

At the Southwestern Legal Foundation's annual Institute on Labor Law, in 1968, William P. Murphy presented a comprehensive and balanced appraisal of the NLRB in action, based on a year's experience as a "Professor-Intern" in Washington, D.C. In evaluating the Board's performance, Professor Murphy identified a few "clearly valid" tests: "Does the agency have fair procedures? Does it have high calibre personnel? Does it explicate its decisions clearly for the guidance of its clientele and the courts? Does it keep its substantive law up to date with the times? How well do its decisions stand up on appeal?" In all of these respects, he concluded, the Board's record was "outstanding."⁷⁷ On the other hand, Murphy found that the Board did not "measure up as well" by certain other criteria: efficiency of the internal organization; disposal of cases "as speedily as possible, consistent with thorough consideration"; effectiveness of remedies; and public confidence in the agency's impartiality.⁷⁸ But the ultimate standard, said Murphy, is, "how well does the agency effectuate the legislative purposes and policies it administers?" "On net balance," he concluded that the Board "still does a pretty good job today, and that it deserves fewer brickbats and more bouquets than it is going to get."⁷⁹

The foregoing review does not, as we mentioned earlier, even begin to cover the flood of articles written about the NLRA and the NLRB during the 1960's. As was also previously noted, however, most of these pieces were primarily descriptive, and many were purely contentions. Finally, in concluding this section, we think it worthy of mention that the report and recommendations of the Cox Advisory Panel, released at the start of the decade and virtually ignored at the time, addressed itself to just about every major concern in the field of labor relations law that was reflected in the literature during the ensuing 10 years.

Fair Employment Practices

A. RESURGENCE OF INTEREST

The decade of the 1960's marked a tremendous resurgence of interest in the problem of fair employment practices, which had theretofore received only sporadic attention from scholars and virtually none from practitioners. The passage of Title VII

of the Civil Rights Act of 1964, however, was followed by a torrent of books and articles, most of which dealt principally or exclusively with problems of racial discrimination in employment.⁸⁰ Somewhat later, the long-neglected problem of sex discrimination in employment began to receive serious attention for the first time.

For purposes of this essay, the books by Ray Marshall and Michael Sovern are the most important. Professor Marshall traced the progress of the Negro's efforts to achieve equal status and treatment in employment and in labor unions from the end of slavery to the passage of Title VII. His review of the effects of state fair employment practices acts on racial discrimination by unions led him to conclude that such legislation "can prevent some overt acts of discrimination and establish a framework within which Negroes can move toward more equal employment opportunities,"⁸¹ but that it alone cannot solve the problem. In Marshall's view, the hostility of some unions toward Negroes is based less on their race or color than on an underlying sense of economic insecurity, which finds expression in exclusionary policies against all applicants for membership. He also stressed the role of employers in creating or perpetuating discriminatory practices, as well as the lack of adequate education or training which prevents many Negro members of the labor force from satisfactorily performing the jobs to which they aspire. Marshall's findings were based in large part on his personal field work. He discussed with refreshing candor the problem of "Jim Crow" auxiliaries, pointing out that many of them did not want merger with their all-white counterparts because, frequently, merger on a straight proportional basis would result in a relative loss of jobs for Negro members and a total loss of power for the officers of the all-Negro locals. Finally, Marshall emphasized the points later made by others⁸² that Negroes stand to gain the most from an increase in total employment and that the correlation between unemployment and lack of education is closer than any correlation between unemployment and race.

Professor Sovern's book provides both a history and an analysis of legislative and executive efforts at the state and federal levels to deal with racial discrimination in employment. His judgment of the present state of these types of regulation was harsh: The

Equal Employment Opportunity Commission (EEOC) established to administer Title VII "is a poor, enfeebled thing," with "power to conciliate but not to compel"; the state commissions are "robust in constitution . . . [but] weak in action"; the federal contractor program "is powerful, but can reach no further than presidential orders creating it allow."⁸³ There is a vast clutter of mechanisms to prohibit various types of discrimination in employment: the EEOC, the Attorney General of the United States, the Department of Labor, the NLRB, state employment services, civil service commissions, municipal civil rights agencies, boards of education, licensing commissions, and, of course, state and federal courts.

Sovern thought this unsatisfactory state of affairs could be corrected in large part by the adoption of a model fair employment practices law. Such a law should, in his opinion, be comprehensive in its substantive proscriptions and in its coverage; should empower and direct an administrative agency to receive and act on complaints, initiate its own investigations, enter into appropriate settlement agreements, institute administrative enforcement proceedings, eventuating, if necessary, in judicially enforceable cease-and-desist orders, require affirmative action, especially in recruitment and training policies, conduct follow-up reviews to determine compliance, seek immediate judicial enforcement in cases of noncompliance, and engage in educational activities and provide advisory services; should provide for judicial review of the agency's orders at the request of any aggrieved party; and should require the keeping of certain records to assist in the policing of the law.

Although Sovern favored concentration of the principal authority to enforce antidiscrimination laws in a single federal agency, he conceded that the sheer magnitude and pervasiveness of the problem made it desirable to preserve the operation of state laws and the federal contractor program. By the same token, he argued that because many instances of unlawful treatment of nonunion members under the NLRA involve members of minority groups, the NLRB should continue to entertain such cases and take the necessary remedial action.

Finally, Sovern took a strong position against "compensatory discrimination" as a remedy for past and continuing racial discrimination. In his view the vice of this proposed solution is that

it treats all members of minority groups as a class, instead of as individuals. Thus, "to an extent not fully defined, preferential treatment would have choice controlled by the characteristics of the race rather than by those of the individual";⁸⁴ therefore, it must be opposed. He saw a difference, however, between judging individuals on their own merits, and seeking out members of minority groups for employment and training them, if necessary, to perform the work in an acceptable manner. Like Marshall and others, Sovern emphasized that such a policy should be pursued in respect of all disadvantaged groups, regardless of race.

B. RACIAL DISCRIMINATION AND THE NLRB

Commencing in the 1940's and continuing for the next 20 years, the burden of protecting racial minorities against hostile discrimination in employment by both employers and unions fell almost entirely upon the federal courts. It seems ironic that although the major decisions establishing the principle of the union's duty of fair representation involved cases of racial discrimination,⁸⁵ the rights they enunciated were rarely fully realized by black workers. This fact was documented impressively by Neil Herring, who painstakingly traced the subsequent history of some of the leading cases and showed the depressing gap between the Supreme Court's elevated rhetoric and the actual results produced.⁸⁶

The legal problems raised by the NLRB's more recent decisions designed to counteract the effects of racial discrimination are complex and cannot be explored in this essay.⁸⁷ Moreover, some of the Board's theories on this question have met with a mixed reception in the courts,⁸⁸ thereby rendering much of the published commentary somewhat speculative. There has been general scholarly approval, however, of some Board policies, such as rescission of the offending union's certification as exclusive bargaining agent; refusal to certify such a union in the first instance; and refusal to apply the "contract bar" rule (making an existing collective agreement a bar to a new election for the first three years of its existence) in the case of discriminatory agreements.⁸⁹ Sovern also suggested that the Board should refuse to require an employer to bargain with a union in default of its duty to represent fairly.

The controversy has centered on the question whether union

racial discrimination, unconnected with union membership or non-membership as such, can properly be denominated an unfair labor practice. In 1962, for the first time in its history, the NLRB found a union guilty of an unfair labor practice for violating its duty of fair representation.⁹⁰ The new policy was promptly applied in cases in which the union was found to have denied fair representation to employees because of their race,⁹¹ and a predictable flow of published commentary followed.

Sovern saw no objections on policy grounds to the Board's new view that the NLRA "gives employees the right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment"; that unions are accordingly "prohibited, when acting in a statutory representative capacity from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair"; that the union is also prohibited from attempting to cause or causing an employer to derogate the employment status of an employee for "arbitrary or irrelevant reasons or upon the basis of an unfair classification";⁹² and that any employer yielding to such union pressure also commits an unfair labor practice. He doubted, however, contrary to the decisions of the Fifth Circuit in the *Longshoremen's* and *Rubber Workers* cases,⁹³ that it is a refusal to bargain in good faith for an employer and a union voluntarily to agree to a discriminatory contract provision. On the other hand, he felt that it would clearly be an unfair labor practice for one party to force such a clause on another.

Differing from Sovern, William Murphy expressed "serious doubt as to the propriety of the Board's assumption of power in *Miranda* and *Hughes Tool* and also the legal logic upon which those cases rest."⁹⁴ Yet, though the new doctrine seemed to him "strained and far-fetched," he was not prepared to predict that it would not eventually be upheld.⁹⁵

A somewhat different view was taken by Professor Herbert Sherman. Concerned about possible conflicts in the application of overlapping antidiscrimination policies of the Railway Labor Act (RLA), the NLRA, and Title VII, he urged an approach based on a theory of accommodation. Under his theory, "the

NLRB should not be permitted to grant affirmative relief under its unfair labor practice jurisdiction for breach of a union's duty of fair representation based on discrimination covered by Title VII. . . ."⁹⁶

C. EMPLOYMENT DISCRIMINATION AND TITLE VII

State fair employment practices laws preceded the enactment of Title VII of the Civil Rights Act of 1964 by about 20 years, yet the literature on their operation and effect was comparatively light. Significantly, most of the published work on this subject in the 1960's appeared after the passage of Title VII.⁹⁷

The first articles dealing with Title VII quite naturally concentrated on its legislative history and on description and analysis of its provisions. Of the earlier pieces, the one by Richard Berg is perhaps the most enlightening.⁹⁸ In addition to outlining the provisions of the new law and pointing out ambiguities and seeming conflicts within the statute, Berg explained the reasons for the "leadership compromise," which deprived the EEOC of the right to bring suits to enforce compliance with the title and substituted an individual right of action by the person aggrieved. He also detailed the story behind what is surely one of the greatest legislative anomalies of modern times: the "sex amendment" to Title VII. As Berg's explanation made clear, the amendment was "an orphan," because neither the proponents, who were against the entire bill, nor the opponents, who were afraid to speak out against it, "seem to have felt any responsibility for its presence in the bill."⁹⁹ He predicted, quite accurately, that given the absence of any discernible congressional "intent" in respect of the amendment's application, the courts would have to wrestle with the problem as best they could.

No one, however, seems to have anticipated the flood of subsequent litigation involving sex discrimination or the rapidity with which state "protective" laws limiting work opportunities for women would be nullified, either because of their inconsistency with the proscription against sex discrimination in Title VII, or because of newly-awakened constitutional doubts. The published commentary increased accordingly. A current bibliography published by Commerce Clearing House¹⁰⁰ lists no fewer than 15

articles and comments on the subject. Reflecting the new mood toward established laws designed for the protection of the female worker, Pauli Murray and Mary Eastwood concluded: "The recent increase in activity concerning the status of women indicates [a growing recognition] that . . . the proper role of the law is not to protect women by restrictions and confinement, but to protect both sexes from discrimination."¹⁰¹

The great bulk of published work on Title VII, however, was concerned with the efficacy of the statutory procedures for the enforcement of the federal fair employment policy. The weight of scholarly judgment was disapproving. The opinions of Sovern¹⁰² and Marshall¹⁰³ have previously been quoted. Wellington similarly concluded that "while the primary rights created by the statute are far-reaching and generously conceived, and the ultimate remedy direct and substantial, the enforcement procedures, unless wisely developed by the courts and Department of Justice, can be very unsatisfactory and thereby make the statute more promise than fulfillment."¹⁰⁴ Professor Sam Barone's opinion was that the policy of voluntary compliance is "inadequate to the task of eliminating unlawful employment practices," and that a more appropriate device would be to empower the EEOC "to issue cease and desist orders enforceable in the courts."¹⁰⁵

A few authors, however, took a somewhat different view. Professor Wayne Walker saw the modern tendency to give to administrative agencies rather than to courts the power to issue initial enforcement orders under federal regulatory laws as "evidence of disaffection with the courts as effective institutions for the administration of laws of social reform."¹⁰⁶ He observed that if the efforts to give the EEOC power of administrative adjudication were not immediately successful, "the record of trial courts in enforcing Title VII may well prove to be a kind of institutional testing ground for the future role of courts at the trial level in the social reform process."¹⁰⁷ Alfred Blumrosen went further; he emerged as the only recognized authority on Title VII who favored the statutory scheme, with its emphasis on the individual right to sue, over the competing model of an agency with authority to exercise quasi-judicial powers. Professor Blumrosen rejected "the classic 'liberal view' . . . that the individual

right to sue is not meaningful in the field of social legislation"; he claimed that experience under Title VII had proved that "the individual right has become a vehicle by which . . . group interests are asserted," and that the group interest had "breathed life into what might have been a sterile conception of individual rights to sue."¹⁰⁸

Commenting on Blumrosen's thesis, Bok indicated general agreement with the proposition that Congress should hesitate before empowering the EEOC to issue orders in cases arising under Title VII. He thought the Commission would work harder to settle cases voluntarily so long as it possessed the power only to conciliate and not to command. Moreover, because discrimination is a moral as well as an economic problem, he saw advantages in eliminating it by persuasive rather than by legal compulsion. Finally, Bok offered three reasons for doubting the wisdom of the assumption that discrimination would be eradicated more quickly by giving the EEOC compulsory powers. First, he thought the Commission's record of successful conciliations belied the contemptuous characterization of "paper tiger"; second, he found the law subject to "serious limitations" in seeking to eliminate discrimination in employment; and, third, he feared that allowing the EEOC to issue orders might transform it into a "gigantic grievance procedure in which disgruntled members of minority groups seek to contest various management decisions involving individual promotions, assignments, and disciplinary actions," thus diverting the Commission's energies from more critical issues and engendering hostility on the part of the unions and employers subjected to government investigation in such cases.¹⁰⁹

D. JUDICIAL REMEDIES UNDER TITLE VII

Somewhat to the surprise of many observers who feared that the judiciary would interpret Title VII in a hostile or narrow fashion, the federal courts, particularly those in the South, seem generally to have demonstrated a sympathy with the broad purposes of the statute and a willingness to require not only a cessation of discriminatory practices but some affirmative action to counteract their effects.¹¹⁰ Some thought, however, that the courts had not gone nearly far enough. For example, William Gould

repeatedly criticized judicial interpretations and applications of Title VII in racial discrimination cases as too narrow and restrictive, and warned that when "legitimate racial grievances have been met by promises that produce certain expectations, and when these promises and expectations are unrealized, the result will be disillusionment, despair, and violence."¹¹¹ Professor Gould's principal objection to the judicial decisions in these cases was that even the better ones failed to require the necessary affirmative action to deal as far as possible with the continuing effects of past discrimination. The prime mechanism for this purpose, he argued, was compensatory seniority.¹¹²

Blumrosen shared Gould's views,¹¹³ but remained "optimistic that we can reach an adequate solution to the seniority dilemma," provided that there can be a "clear articulation of the law on seniority issues."¹¹⁴ Blumrosen also strongly emphasized the need to establish under Title VII a "duty of fair recruitment," embracing the requirements that an employer with a substantially segregated labor force recruit in a manner "affording realistic notice of job vacancies and opportunity to apply for them to the minority community;" that qualifications for hiring not unfairly exclude minorities; and that minority applicants be fairly and promptly processed.¹¹⁵

Individual Rights and Fair Representation

Not all issues of fair representation involve alleged discrimination based on race or sex. The rights under collective agreements of individual employees whose interests are adverse to those of the exclusive bargaining representative continued to be a subject of considerable interest in the 1960's. Decisions of the Supreme Court highlighted new policy issues, including the following: the right of an employee to sue his employer, under Section 301 of the LMRA, for breach of a collective agreement that is arguably or admittedly an unfair labor practice;¹¹⁶ the right of an employee to sue his union under Section 301 for violation of his contractual rights by virtue of its failure to represent him fairly;¹¹⁷ the right of an employee to sue his employer for breach of contract without first exhausting the grievance and arbitration procedures under the collective agreement;¹¹⁸ and the application of the doctrines

of the NLRB primary jurisdiction and of federal preemption to suits brought in state courts by individual employees against unions for alleged breaches of the unions' duty of fair representation.¹¹⁹

Authorities on this general subject have recognized the need to protect individual rights, but have never agreed on the best way to do so. The view enunciated by Cox, that "[i]mportant group interests are best served by vesting the power to prosecute and settle all claims of contract violation in the bargaining representative," and that individual rights can best be protected "through evolution and implementation of the duty of fair representation,"¹²⁰ received the greatest judicial support. Clyde Summers, however, disagreed. He argued that experience had shown that the duty of fair representation "gives almost no protection to the individual." Its "two critical defects," he asserted, were that "the standards applied cannot reach the subtle forms of discrimination, insensitivity and other covert abuses in grievance handling," and that "the suit is directed toward the union when the employer is often the initiator of the protested action." Suing the union, besides posing "both psychological and procedural difficulties," cannot provide "the most needed remedy—reinstatement."¹²¹ Professor Summers proposed, instead, the following guidelines for fashioning federal substantive law under Section 301:

(1) The individual employee has rights under the collective agreement, the enforcement of which are not subject to the union's control.

(2) The union and the employer cannot block the enforcement of these rights by agreeing between themselves that those rights can be compromised or ignored without the individual's consent or authorization.

(3) The individual rights are limited by the substantive terms of the collective agreement.

(4) The union has an interest in all terms of the collective agreement and a right to insist on the enforcement of the agreement.¹²²

Blumrosen occupied a position somewhere between those of Cox and Summers. He felt that the "good faith discretion test does not adequately protect the employee's basic relation to his job"; that discharge and seniority cases involving "critical job

interests" should be heard on their merits in some impartial forum; that "the employee should be allowed to prove that his claim is meritorious"; and that the union should then "be required to demonstrate why it rejected his claim. . . ." ¹²³

Surveying the consequences of the Supreme Court decisions on individual rights and fair representation previously cited, including the requirements that an employee must exhaust his contractual remedies before he sues his employer for violation of contract under Section 301, and that he cannot bring such a suit unless he can prove that the union violated its duty to represent him fairly, Benjamin Aaron concluded that the rules were unfair. He argued that the employee ought to be permitted to sue his employer for breach of contract if he proves that the union, "for whatever reason," refused to exhaust the contract grievance and arbitration procedure in his behalf. Conceding the risk that a court might, in sustaining the employee's claim, construe the collective agreement in a way damaging to the employer-union relationship, Aaron asserted that "if collective bargaining can be made to work only by completely suppressing the rights and legitimate expectations of individual employees, it is hardly worth preserving." ¹²⁴

Grievance Arbitration

With the exception of the substantive and administrative aspects of the NLRA, no topic was the subject of so much research and writing in the 1960's as grievance arbitration. A number of books were written on the subject, of which the best was by Robben Fleming. Professor Fleming addressed himself to most of the important problems: individual rights, procedural regularity, discovery and admissibility of various types of evidence, delays, and costs. Calling attention to the appearance of "significant criticisms" of grievance arbitration and the general unawareness that "grievance arbitration is a . . . complex and sophisticated process" that needs more study, Fleming suggested as a mechanism for that purpose a "continuing Arbitration Conference," modeled after the Judicial Conference of the United States.¹²⁵ He saw in this device the possibility of an "immeasurable contribution" to the maintenance and advancement of an institution which he described as "one of democracy's most successful experiments in private self-government."¹²⁶ Fleming also

noted that most research on grievance arbitration has been done by economists and lawyers, because "most of the academicians who are knowledgeable in the field come from those disciplines"; but he added that some problems would receive adequate treatment "only when the skills of the political scientist, the sociologist, and the psychologist are mobilized."¹²⁷

Most of the literature on grievance arbitration during the 1960's, however, took the form of journal articles, papers presented at academic meetings, and student notes and comments in the law reviews. Much of the student work in this field was especially good; we regret the impossibility of reviewing it within the space limitations of this essay. The consistently best short pieces on grievance arbitration and related matters appeared in the annual proceedings of the National Academy of Arbitrators (NAA). They reflected the principal concerns of both scholars and practitioners throughout the decade. Our review of this rich literature must necessarily be incomplete and highly selective.

A. ARBITRATION AND DUE PROCESS

As he had so many times before, on so many different topics, Willard Wirtz had written the definitive introduction of the subject of due process in arbitration in 1958.¹²⁸ He confessed, at the outset, that to speak of "due process of arbitration" was "to risk a seeming confusion of terms"; for the phrase was "borrowed from the lexicon of law, and therefore suspect in this shirtsleeves, seat-of-the-pants, look!-no-hands business of arbitration."¹²⁹ Basing his discussion on problems encountered in his own extensive experience as an arbitrator and on replies of some of his NAA colleagues to a questionnaire he had sent them, Wirtz suggested that "the conclusion that the parties . . . are the ultimate policy makers—in the 'legislative' sense—does not foreclose the possibility that there may be great advantage in recognizing a different center of responsibility for establishing adjudicative procedures." He added that the determination of these procedures had, in fact, been left almost entirely to the arbitrators, and that this process required "a broad balancing of interests, including recognition of independent individual interests," even where this meant—"in the unusual case—piercing the institutional, representative veil."¹³⁰

Three years later, Fleming presented an "interim report" of a study made by Wirtz, Aaron, and himself on "arbitral practices in certain sensitive areas":¹³¹ notice, appearance, and a fair hearing. Fleming concluded that "labor law still lacks an agreed and coherent theory of the nature of the collective bargaining agreement,"¹³² with the result that there is uncertainty over who besides the employer and the union is entitled to notice and to the opportunity to appear and be heard in an arbitration proceeding. He also found a wide disagreement between arbitrators as to whether arbitration is simply an extension of collective bargaining or is essentially a judicial process. This difference in perception affected the responses of various arbitrators to such problems as the "agreed" or "rigged" case. Finally, Fleming noted and took comfort from "the willingness of arbitrators to experiment, and to abandon their theories in favor of practices which will tend to accommodate the diverse interests . . . involved."¹³³

A much less dispassionate and sanguine analysis was offered by Paul Hays. Dismissing the literature of arbitration as "among the dullest and dreariest," consisting almost entirely of "subjective discussions of arbitration written by arbitrators, who are likely to know very little about arbitration outside their own experience—and about their own experience are not inclined to frankness,"¹³⁴ Judge Hays enthusiastically blasted away at the faults of the system in which he had played a prominent role for over 20 years before ascending to the bench. Most arbitrators, he thought, were incompetent, corrupt, or both; collusive arrangements between labor and management designed to hoodwink innocent workers were common occurrences; delays were excessive; and costs were outrageous.

Whatever one's view of the merits of these accusations, Judge Hays was surely wrong in characterizing the literature on arbitration as consisting chiefly of "undiscriminating praise"¹³⁵ heaped on the process by the arbitrators themselves. No other group of specialists has manifested such a perverse delight in examining their own real or imagined deficiencies and in inviting others to do the same.¹³⁶

B. ARBITRATION AND THE COURTS

As indicated at the outset of this essay, the *Steelworkers Trilogy*

of 1960 established arbitration as the preferred instrument of national labor policy for the settlement of disputes over rights. In one of these cases, Justice Douglas, writing for the Court, described the labor arbitrator as one who "performs functions which are not normal to the courts." "The ablest judge," said he, "cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed."¹³⁷ Most arbitrators tended to agree, although many were embarrassed by the extravagance of the Court's rhetoric.

The most outspoken dissenter was Judge Hays. He declared that only a "handful" of arbitrators possessed "the knowledge, training, skill, and character to make them good judges and therefore [sic] good arbitrators." The remainder, who decided "literally thousands of cases every year," were "wholly unfitted for their jobs."¹³⁸ Considering these assumed circumstances, Hays concluded, it was outrageous to require federal and state judges routinely to enforce either agreements to arbitrate or awards rendered pursuant to such agreements.

Wellington presented a much more reasoned (though in our view, unpersuasive) argument for a change in the present allocation of authority between arbitrators and the courts. He thought a "happier solution" would be to permit "serious judicial review of whether the parties agreed to arbitrate a particular dispute in a post-arbitration proceeding." Although ruling out a hearing *de novo* by the court, he declared that the arbitrator "should be required to write a reasoned and unambiguous opinion," and that the court should determine whether the arbitrator's award was "reasonable in light of the language of the collective agreement, projected against its industrial background and revealed in the opinion of the arbitrator."¹³⁹ This suggested reform would eliminate the undesirable requirement that courts "blindly . . . approve and make official the actions of private decision-makers whose authority to decide is frequently itself the issue in dispute." It would, however, also have the "inescapable effect" of eliminating "that type of arbitration which the Supreme Court so strenuously endeavored to preserve: arbitration in which reliance is not placed solely upon preexisting standards supplied by contract, but also upon prudential considerations related to a changing industrial environment."¹⁴⁰ This cir-

cumstance led Wellington to embrace "a more radical solution" originally suggested by Dean Harry Shulman over a decade earlier: "When the autonomous system breaks down, might not the parties better be left to the usual method for adjustment of labor disputes rather than to court actions on the contract or on the arbitration award?"¹⁴¹

Most scholars and practitioners shared the view that it was too late for this type of solution, whatever its merits; the law was moving steadily in the other direction. And yet there were doubts. Bernard Meltzer tentatively suggested a less drastic modification of existing policy: require the courts to enforce the award unless it clearly lacked a "rational basis in the agreement read in the light of the common law of the plant where appropriate."¹⁴² Professor Meltzer indicated that his proposal was based on the same premise as that underlying a recent amendment of the RLA, which now provides in part that findings and orders of any division of the National Railroad Adjustment Board (NRAB).

shall be conclusive on the parties, except that the award of any division may be set aside, in whole or in part . . . for failure . . . to comply with the requirements of this chapter, [or] . . . to conform, or confine itself, to matters within the scope of the division's jurisdiction. . . .¹⁴³

Rejecting Meltzer's proposed standard of review because of the flexibility of the phrase "lacking a rational basis in the agreement," Aaron suggested, as preferable, an adaptation of the RLA amendment language as an amendment to Section 301 of the LMRA. Such an amendment, he argued, would accomplish the result Meltzer intended, and would have the additional advantage of applying the same standards of judicial review to awards arising under both statutes.¹⁴⁴

Meltzer raised another problem affecting the relationship between arbitrators and the courts that became the subject of a lively and continuing debate in the latter part of the decade. The problem is, when the collective bargaining agreement that the arbitrator is being asked to construe and apply is arguably in conflict with existing law, should his decision be based on the collective agreement or on the law as he understands it? Meltzer thought arbitrators should respect "the agreement that is the source of their

authority and should leave to the courts or other official tribunals the determination of whether the agreement contravenes a higher law." Otherwise, he argued, they would be "deciding issues that go beyond not only the submission agreement but also arbitral competence."¹⁴⁵

Robert Howlett flatly disagreed with Meltzer. He declared that arbitrators, as well as judges, "are subject to and bound by law, whether it be the Fourteenth Amendment . . . or a city ordinance. All contracts are subject to statute and common law; and each contract includes all applicable law." In short, said Howlett, subject to one caveat, "arbitrators *should* render decisions on the issues before them *based on both contract language and law*."¹⁴⁶ The caveat related to a situation in which the arbitrator is advised by the parties in advance that he has been chosen to determine an issue under the collective agreement and that he should disregard actual or potential statutory questions, which are to be presented to the NLRB. Here, said Howlett, the arbitrator must comply with the parties' wishes or withdraw; he counseled withdrawal as the wiser course.

A middle position between that of Meltzer and Howlett was proposed by Richard Mitterthal. He was willing to grant that statutory law may guide the arbitrator "on occasion," but he insisted that the arbitrator "must follow the rule of law established by the contract."¹⁴⁷ Mitterthal's proposed solution was adoption of the principle that "although the arbitrator's award may *permit* conduct forbidden by law but sanctioned by contract, it should not *require* conduct forbidden by law even though sanctioned by contract."¹⁴⁸

The latest, though surely not the last, round of this debate featured Michael Sovern, who disagreed with all the views previously expressed. Dean Sovern argued that the arbitrator may follow the law rather than the contract when, but only when, all of the following conditions are met:

1. The arbitrator is qualified.
2. The question of law is implicated in a dispute over the application or interpretation of a contract that is also before him.
3. The question of law is raised by a contention that, if

the conduct complained of does violate the contract, the law nevertheless immunizes or even requires it.

4. The courts lack primary jurisdiction to adjudicate the question of law.¹⁴⁹

C. ARBITRATION AND THE NLRB

The crucial role given to arbitration in the maintenance of industrial peace in the 1960's gave added importance to the relationship between the NLRB and the arbitration process, particularly in discharge cases involving alleged employer violations of the NLRA, representational and jurisdictional disputes, cases of alleged violation by unions of their duty of fair representation, and cases of alleged violations by employers of their duty to bargain. Surveying the NLRB decisions, Professor Peck concluded that they were properly subject to criticism "for failing to distinguish adequately the different types of cases and the different stages at which the problems of accommodation or preemption may arise."¹⁵⁰

1. Discharge Cases

In *Spielberg Manufacturing Co.*¹⁵¹ the NLRB had enunciated a doctrine that it would defer to arbitration awards in dismissal cases arguably involving an unfair labor practice as well as an alleged contract violation if, but only if, the arbitration procedures had been fair and regular, all parties had agreed to be bound by the award, and the award itself was not repugnant to the policies and provisions of the NLRA. Peck considered the Board's policy satisfactory where an arbitration award had been issued; but he criticized the Board's refusal in a discharge case¹⁵² to withhold its process and to order the parties to use an available grievance and arbitration procedure simply because an award had not been rendered, neither the employer nor the union had invoked arbitration, and the employee was not entitled to initiate arbitration under the agreement. Peck reasoned that if the employer was willing to arbitrate, the Board should support the bargaining relationship (and, incidentally, reduce its own caseload) by refusing to process the union's charge.

In cases in which the union refused to arbitrate, Peck agreed with the Board that the employee, in addition to bringing a court

action against the union for breach of its duty of fair representation, should also be able to file an unfair labor practice charge with the NLRB. He specifically approved the Board's remedy when it found a violation: directing the union to proceed to arbitration, while retaining jurisdiction of the case for any additional remedial action, if needed, after completion of the arbitration.¹⁵³

2. *Representational Disputes*

Carey v. Westinghouse Electric Corp., involved rival claims of two unions having collective agreements with the same employer. The claims could be viewed as involving either the right to certain work assignments or the right to represent the employees doing that work. The Supreme Court directed arbitration of the claim made by one of the two unions. Justice Douglas conceded that "the superior authority of the Board may be invoked at any time"; meanwhile, he argued, there could be no harm in allowing "the therapy of arbitration," a chance to work.¹⁵⁴ Subsequently, the NLRB refused to honor the arbitrator's award in that case.¹⁵⁵ Peck agreed that there was little reason for the Board to defer to an award in this instance, because the second union had neither participated in nor agreed to be bound by the arbitration. Noting, however, that the Supreme Court had taken a different approach in a decision involving rival jurisdictional claims under the RLA, in which it held that the NRAB could not make a binding award unless both unions were parties to the proceedings,¹⁵⁶ Peck suggested that if this view were eventually to prevail, the NLRB might well reconsider its position.

Edgar Jones had another, more ingenious idea, which he developed exhaustively in several articles.¹⁵⁷ In brief, Professor Jones argued the advisability of trilateral arbitration in these cases. The means by which he proposed to effect this procedure—arbitral orders of joinder and interpleader—cannot be adequately treated within the compass of this essay; but they were provocative enough to inspire a critique by Professor Merton Bernstein,¹⁵⁸ followed by a further explication and defense by Professor Jones.¹⁵⁹ Although Jones' views have not gained wide support in the courts or among practitioners, they represent some of the freshest thinking in this field during the past decade.

3. Refusals to Bargain

In *NLRB v. C & C Plywood* the Board held that an employer's failure to rescind unilaterally instituted premium pay plans constituted a refusal to bargain. The Supreme Court sustained the NLRB, holding that it had jurisdiction to construe and determine the meaning of a contract provision in order to decide the issue of the employer's duty to bargain.¹⁶⁰ Similarly, in *NLRB v. Acme Industrial Co.*, the employer refused to provide the union with information the latter had requested concerning the removal of machinery from the plant, allegedly in violation of the refusal to bargain. The Board's claim that the information was necessary to enable the union to evaluate the grievances filed was sustained by the Supreme Court.¹⁶¹

Peck doubted the wisdom of these decisions, despite their affirmance by the Supreme Court. He found the Board's policy to be rooted in the rule that the duty to bargain continues to exist unaltered in respect of any subject not discussed during contract negotiations.¹⁶² This rule, said Peck, is "unrealistic" and "unworkable" because it requires a determination of how much and how specific a discussion must have taken place during negotiations in order to put the subject outside the area of further bargaining.¹⁶³ Peck deplored the Board's "deep concern for the vast and virgin territories of the employment relationship in which the statutory obligation of bargaining has not had an opportunity to exert its beneficent influence,"¹⁶⁴ and suggested that the Board's fear that the remedies available for enforcement of contracts are inadequate to protect the parties to a bargaining relationship was without foundation.

D. IMPACT OF ARBITRATION POLICIES

The *Steelworkers Trilogy* and subsequent decisions had a major impact on the law of arbitration and the practices and attitudes of the parties, the arbitrators, and the courts. In a remarkable series of articles Professors Russell Smith and Dallas Jones undertook to appraise the force and extent of that impact. Their first article was based on a questionnaire sent to a large number of labor and management representatives. The authors reported that by "an overwhelming majority" the respondents indicated a preference for the

arbitration process over the principal available alternatives: submission of all disputes to the courts or free resort to strike and lockout.¹⁶⁵ The general tenor of the appraisals of the arbitration process by the respondents centered on "legal" and procedural matters; yet the authors concluded that many people still want arbitration to remain an "informal, inexpensive, [and] expeditious problem-solving process."¹⁶⁶ Nevertheless, Smith and Jones concluded that "for a variety of reasons, including recent legal developments, the professionalization of the arbitrator and the increased use of attorneys," greater emphasis could be expected to be placed on the "quasi-judicial role of the arbitrator," and that the arbitration process would become "more palatable in the light of the present state of the law concerning the finality of the arbitrator's determination."¹⁶⁷

In the second article the authors attempted "to categorize the different kinds of challenges to arbitral jurisdiction or authority which can be made, and to assess . . . the import of the [Supreme] Court's decisions for the arbitration process."¹⁶⁸ The body of the article consisted of a listing and analysis of issues involving arbitral jurisdiction or authority. In their conclusion the authors took note of Justice Frankfurter's dissenting opinion in the *Lincoln Mills* case,¹⁶⁹ in which he expressed doubt that the federal judiciary could construct an industrial code that would adequately serve the vital interests involved and at the same time preserve and strengthen the collective bargaining process. Recognizing that "the die is now cast," and that "Federal law is being developed at an accelerating rate," they nevertheless declared that the question how far the Supreme Court will or should go in structuring the law was one meriting serious concern and attention. Legislative assistance, they thought, might ultimately be necessary. On the whole, however, they were optimistic:

we think the judiciary will probably be equal in the main to the challenge presented, and that on the whole the area is one which can best be treated . . . on a case-by-case basis, enabling a careful examination of real problems, the drawing of important distinctions, the testing of principle against practice, and practice against principle.¹⁷⁰

The analysis of the impact of Supreme Court decisions on arbitration practice was carried forward in the third and final article in the series. The authors concluded, not surprisingly, that the developing federal substantive law concerning questions of arbitral jurisdiction and authority "has had a substantial impact upon the judiciary, arbitrators, and the parties."¹⁷¹ Their other findings, however, were not so predictable. They noted that the scope of the arbitration process had been broadened where "standard" arbitration provisions were used, but that this development had not invariably led to the expansion, by interpretation, of the substance of collective agreements. The total impact on arbitrators was real enough, but its extent remained unclear. The authors also found a tendency by parties to negotiate special limitations upon arbitral jurisdiction and authority, but that employer insistence upon narrowing the scope of arbitration "presumably" had resulted many times in successful union insistence upon corresponding limitations on the scope of the no-strike clause. They judged, therefore, that the Supreme Court decisions have had, to some extent, "a regressive effect on the arbitration process," and have "contributed to industrial conflict rather than to its resolution."¹⁷²

These three articles, although partially overlapping, represent not only a balanced view of the principal developments in the federal substantive law of arbitration during the 1960's and their impact upon all participants in the arbitration process, but also perhaps the most complete review of the relevant cases and published commentary in the first half of the decade. As such, they constitute an important and enduring contribution to the literature on the subject.

Strikes and National Emergency Disputes

A. STRIKES IN BREACH OF CONTRACT

Few decisions caused a greater uproar in labor-management relations during the 1960's than the Supreme Court's decision in the *Sinclair* case.¹⁷³ The court held that the Norris-La Guardia Act forbade federal courts to enjoin a union strike in breach of no-strike clause even when the collective agreement provided for arbitration of the grievance giving rise to the strike. In the *Lincoln Mills* case the Court had held that Norris-La Guardia

did not proscribe a mandatory injunction compelling an employer to arbitrate a union grievance; employers were therefore incensed by what they felt was a most unfair lack of mutuality in the Court's treatment of union refusals to use the arbitration procedure.

Most commentators were critical of the *Sinclair* decision, but differed in their recommendations on how to accommodate to it. A resolution was introduced at the annual meeting of the American Bar Association's Section of Labor Relations Law, in 1962, "urgently" recommending the amendment of the Norris-La Guardia Act to permit federal courts to issue injunctions in "any action" brought under Section 301 of the LMRA "for the purpose of filling the inequitable gap which exists in the law relating to the mutual enforcement of collective bargaining agreements" as provided by Congress under that provision.¹⁷⁴ Management members of a special, tripartite committee appointed to consider the resolution unanimously supported it, claiming that such remedial legislation was in the interest of both employers and unions. Labor union representatives opposed adoption of the resolution as well as the principle it represented. The neutral members agreed that injunctive relief should be available under the circumstances of the *Sinclair* case; but they expressed "reservations concerning the wisdom of taking up in this fashion only one of the related problems which might be considered in need of legislative reform."¹⁷⁵ The problem of strikes over arbitrable grievances, they pointed out, was closely connected with such questions as "whether injunctive relief should be available where the underlying dispute is not arbitrable, whether a strike protesting an arbitrator's award should be enjoined by a court," and related questions.¹⁷⁶

Perhaps the most difficult problem created by *Sinclair* concerned the question whether state courts, which are not covered by Norris-La Guardia, could enjoin strikes over arbitrable grievances in Section 301 cases.¹⁷⁷ The dilemma was ably stated by Professor Summers. If state courts were prohibited from issuing injunctions in such cases, they would be

[deprived] of their most effective remedy for enforcing collective agreements and the only remedy available in those states where unions are not suable as legal entities. The state courts would thus be deflowered by . . .

Norris-La Guardia which was based on Congress's power to define the jurisdiction of federal courts, and [by] Section 301 which had as its most articulate purpose the supplementing of state remedies, particularly in those states where unions were not suable.¹⁷⁸

On the other hand,

If state courts can enjoin strikes, suits for violation of the no-strike clause will flock to the state courts. Federal substantive law will be fashioned in the first instance by the state courts, many of which have not proven themselves hospitable to, or even aware of, national labor policy. As random writs bring disparate decisions to the Supreme Court, it will bear the burden of fashioning and enforcing this segment of federal law, unaided by the instructive opinions of the lower federal courts.¹⁷⁹

Some observers, having concluded that the injunction is a substantive rather than a purely procedural remedy, urged that so long as *Sinclair* represented controlling law, it should be made applicable to the states.¹⁸⁰ The nature of the problem changed drastically, however, when the Supreme Court decided, in *Avco Corp. v. Aero Lodge No. 735*,¹⁸¹ that Section 301 suits initially brought in state courts may be removed to the federal courts. But in *Avco* the Court expressly left open the question whether state courts are bound by the anti-injunction proscriptions of Norris-La Guardia, and whether federal courts, after removal of a Section 301 action, are required to dissolve any injunctive relief previously granted by the state courts. The result was thus even more anomalous than after *Sinclair*: state courts were, in effect, ousted of their jurisdiction in Section 301 suits in which an injunction was being sought, whereas the congressional purpose embodied in Section 301 was, as the Supreme Court subsequently declared in *Boys Markets, Inc. v. Retail Clerks Union*, "to supplement, and not to encroach upon, the preexisting jurisdiction of the state courts."¹⁸² In the latter case the Court overruled *Sinclair*, but declined to hold that either Norris-La Guardia or Section 301 prevents state courts from enforcing collective agreements by means of injunction.

Whether the large body of scholarly criticism had any effect

on the reversal of the Court's position is problematical. But one member of the *Sinclair* majority, Justice Stewart, changed his mind by the time *Auco* was decided, and voted with the majority in *Boys Markets*.

B. NATIONAL EMERGENCY DISPUTES

In 1955 the IRRA published a volume of essays on emergency disputes.¹⁸³ No single work since then has covered the subject better or more comprehensively, and no fundamentally new approaches to the problem have been presented.¹⁸⁴ Public interest in machinery to deal with major disputes having a substantial effect upon the economy tended during the 1960's, as it has before and probably always will, to rise and fall, depending upon the incidence and severity of such disputes.

During the 1960's, however, there was a more or less continuing concern in government and academic circles over the chronic failure of collective bargaining in the railroad industry to avert recurrent crises and threats of nationwide strikes. To a somewhat lesser degree, similar concerns were felt about labor-management relations in the airlines, maritime, and trucking industries. Consequently, the emergency dispute procedures of both the RLA and the LMRA came under renewed scrutiny.

The Independent Study Group's report of 1961 included a discussion of emergency disputes that was characteristically well-reasoned and moderate in tone. It emphasized three points: first, that the United States had an impressive record in moderating the bitterness and extent of strikes; second, that conflict can play a constructive role in labor-management relations, and that, in any case, a certain amount is preferable to a system of widespread government control over the terms of collective agreements; and third, that means other than strikes ought to be developed for the settlement of disputes. The report also declared that government could make its most effective contribution to the solution of the problem of emergency disputes by providing mediation services of high quality. It urged the activation of labor-management panels on a national and community basis to aid and enhance mediation. Finally, the report pointed out that "true emergencies have been rare," and advised that "special procedures be employed with

great caution, since their use tends to undermine the vitality of private bargaining."¹⁸⁵

The specific changes in existing laws proposed in the report were moderate and stressed the importance of flexibility and uncertainty. Partial operation of struck facilities was endorsed as one of a number of possible means that should be made available to the President. The report also stated flatly that neither the grievance machinery nor the emergency disputes procedure under the RLA was working; it recommended that both procedures be changed sharply or scrapped entirely in favor of general procedures applicable to all employers and unions.

In 1964 Stuart Rothman, a former General Counsel of the NLRB and Solicitor of the U.S. Department of Labor, surveyed the "identifiable methods [of dealing with national emergency disputes] which have gained more or less credibility here or abroad."¹⁸⁶ Of the 13 methods listed, which ranged from conciliation to seizure, he recommended as the most appropriate, compulsory statutory arbitration machinery with a nonbinding award. Under Rothman's proposal, the arbitration boards would be tripartite. He thought that the nonbinding awards issued by such boards would be more acceptable to the parties than solutions imposed under other procedures. In any event, he argued, if the proposed award were rejected, the issues would be in a proper posture for Congress to act upon them, should that become necessary. Rothman rejected the proposal, generally supported by neutral authorities, to give the President power to use a variety of weapons, largely within his discretion, in dealing with emergency disputes. He thought this "would open up an unwarranted center of power in the executive branch of the government without necessary and adequate criteria of a government of law and not of men or politics."¹⁸⁷

The extent of disagreement over both the nature of the problem of emergency disputes and the most appropriate procedures for dealing with it was illustrated by the final report of the American Bar Association's ad hoc committee to study the subject. Aside from some descriptive material, the report consisted largely of two conflicting sets of conclusions and recommendations submitted by the management members and the labor members; the two public members abstained from expressing any opinion.

The management members, though not "unmindful of the inconvenience and hardships" incurred by urban populations from time to time because of local work stoppages, expressed the view that "such disputes--however serious their local impact may be--should [not] be brought within the framework of statutes dealing with national emergencies."¹⁸⁸ They also declared that the Title II emergency dispute procedures of the LMRA had, on the whole "been adequate to deal with work stoppages of a critical national character in unregulated, competitive industries"; that administration of those provisions could be improved by a requirement that NLRA remedies first be invoked in disputes to which provisions of that Act were applicable; that modifying Title II emergency disputes procedures by including compulsory arbitration provisions or giving boards of inquiry authority to make recommendations "would impair the effectiveness of collective bargaining as a method of settling disputes"; that the exemption of rail and air carriers from the provisions of the NLRA was "archaic and should be repealed"; that the emergency disputes procedure of the RLA had proved "inadequate," and should be superseded by federal legislation "authorizing the agencies that regulate the rates and allocate the services of the carriers in . . . [the railroad and airline] industries to make final determinations on disputed issues, when federal mediation during the emergency waiting period fails to produce a settlement"; and that "[s]imilar authority should be given by Congress to the federal regulatory agencies for the maritime industry."¹⁸⁹

The labor members declared that "experience has clearly demonstrated that free, unfettered collective bargaining is a more successful process than one which involves active government participation," as illustrated by the "dramatic example" of the automobile industry. Labor relations in the railroad industry, on the other hand, demonstrated "the deadening effect upon the collective bargaining process of constant, predictable government intervention." Thus, they concluded that the recommendations of the management members in respect of the railroad, airline and maritime industries were, "to say the least, paradoxical," and lacked support either in the history of those particular industries or the experience of industry at large.¹⁹⁰ For their part, the labor members declared, *inter alia*, that the Title II emergency dispute

provisions had not generally impeded collective bargaining and had thus, "in a negative fashion, contributed to labor peace"; that amendments of those procedures should be confined to the elimination of unfair or impractical provisions and to making the use and impact of the sanctions less predictable; that railroads and airlines should be placed under Title II of the LMRA and that a strike in the railroad industry "should be treated like a strike in any other industry"; and that when the remedies of the LMRA are applicable to a "so-called emergency dispute," they should be used before invoking Title II procedures.¹⁰¹

A *Virginia Law Review* symposium on compulsory arbitration in 1965 featured the views of Edgar Jones, Guy Farmer, and David Feller. Both Farmer and Feller rejected compulsory arbitration as a panacea for national emergency disputes. Farmer warned, however, that industry and labor "cannot expect to impose their bargaining stalemates upon the economy, and at the same time oppose compulsory arbitration of their disputes."¹⁰² In his opinion "free collective bargaining and compulsory arbitration are incompatible in practical operation"; hence, "we must choose between the proven values of collective bargaining and the promise of freedom from strikes which the advocates of compulsory arbitration hold out."¹⁰³

Feller sought to distinguish between the legislative functions of collective bargaining and the adjudicative functions of arbitration. He felt that "compulsory arbitration can destroy collective bargaining because it is an adjudication which is essentially a dictatorial and initiative process rather than a democratic and creative one."¹⁰⁴ Moreover, because he believed that true emergency disputes are very infrequent, he advocated either outright repeal of the Title II procedures of the LMRA or modification to eliminate some of their "patent unfairness" and to make their impact "less predictable."¹⁰⁵

Professor Jones approached the problem somewhat more philosophically. Noting that in a democracy "governmental compulsion and private consent are in constant tension," he declared that an "assault on a particular instance of governmental compulsion as being contrary to consensuality is meaningless." Jones thought the issue should be framed differently:

given a commitment to attain the maximum personal freedom achievable for each of its citizens, and given the reality that some are stronger than others, is this instance of compulsion by government needed to maintain a desirable degree of public order in the circumstances, or . . . of benefit between the strong and the weak?¹⁹⁶

Although he urged a bias in favor of the consensual, Jones called attention to the "rather extensive permeation of arbitration with nonconsensual elements," and to the "pragmatic quality of choice that has characterized arbitral evolution."¹⁹⁷ He looked forward to the evolution of "nonconsensual techniques, blending elements of compulsion with those of consent."¹⁹⁸

Carl M. Stevens' discussion of compulsory arbitration is of particular interest because it offered a suggestion recently picked up and proposed in modified form by the Nixon administration.¹⁹⁹ Professor Stevens raised the question whether compulsory arbitration is compatible with bargaining and answered it in the affirmative. This would be possible, he argued, under a "strong" system in which "(1) resort to a strike or lockout is really precluded, (2) either party can invoke arbitration (in which event it is never refused), and (3) a tripartite arbitration authority (or a one-party authority operating without a hearing) bases its awards on the one-or-the other principle."²⁰⁰

Another variation on the compulsory arbitration theme was offered by Arthur Wisehart, an airline official. He proposed that emergency boards established under the RLA should be given authority to determine that all or part of an emergency dispute be submitted to compulsory arbitration. The "two important criteria" guiding the emergency boards would be "the effect of the threatened strike on the public and the prospect for settlement by collective bargaining."²⁰¹ "Such a change," he argued, "would restore to emergency boards the status originally intended, give collective bargaining a last chance by strengthening mediation, and place in the hands of disinterested experts the delicate question of whether the nature of the dispute and the public interest are such as to require third-party determination."²⁰²

One of the few novel suggestions in the 1960's for handling emergency disputes was made by Bernard Goodwin and Father

Paul Harbrecht. They proposed a federal statute, applicable to all national and local emergency disputes in both the private and the public sectors, that would supplement existing procedures under the LMRA and the RLA. The statute would permit, among other things, the issuance by federal district courts of injunctions against emergency strikes at the instance of "the legal officer of any government body having jurisdiction over the locality where the strike or lockout occurred." Also, any taxpayer able to show that a strike or lockout "affected or would affect his health, welfare, or safety," could petition the court for a writ of mandamus compelling the legal officer to seek the injunction. The authors proposed, in addition, "the creation of a permanent National Council of Economic Studies which would serve as a permanent, impartial, and objective source for determination of what is fair in economic disputes."²⁰³

After the Supreme Court invalidated the seizure by the President of the steel mills in 1952,²⁰⁴ there was a noticeable decline in proposals to include seizure in the Government's "arsenal of weapons" in emergency disputes. It is interesting, therefore, that John Blackman's definitive work on the subject²⁰⁵ should have been published in 1967. Professor Blackman painstakingly reviewed the 71 instances of presidential seizure dating back to 1864. He concluded that "the problem of emergency labor disputes could be largely solved if suitable means of wage determination, without resort to strike or lockout, were devised for . . . [the transportation and defense production] industries." Short of that, he argued, "the presidents should be excused if they step in, on an *ad hoc* but recurring basis, to protect the public interest."²⁰⁶

Surveying the various suggestions for legal control of major disputes, Wellington suggested that a combination of a federal statute giving the President a wide choice of procedures in dealing with emergency disputes, but also giving the parties the right to opt out, might work well if supplemented by private non-stoppage strike²⁰⁷ agreements between parties electing that option.²⁰⁸

A review of the literature of the 1960's on the subject of emergency disputes only serves to emphasize that there is no single "correct" answer or "final solution."²⁰⁹ The various proposals for

changes in or abolition of existing procedures—some constituting mere tinkering, others involving wholly new arrangements, many of which were politically infeasible or practically unworkable—demonstrated once again how differently the basic problem was perceived by a number of people.

Collective Bargaining and the Antitrust Laws

Supreme Court decisions dealing with the application of the antitrust laws to collective bargaining or to union activities have not been notable for their insight, logic, or consistency. To make sense of them most readers have had to depend heavily upon the descriptive and analytical commentaries of scholars in the fields of law and of economics. This was particularly true in the 1960's.

For an authoritative and incisive review of the period from 1890 through 1959, it would be difficult to find a better essay than Professor Hildebrand's, published in 1962. After reviewing the historical material, Hildebrand turned to an analysis of more recent proposals to renew the application of antitrust laws to regulation of the labor market. Some he dismissed as little more than "incantation," and he correctly characterized them as "an indiscriminate attack on a whole range of admittedly difficult problems—corruption, coercion, big unionism, national strikes, and even collective bargaining itself."²¹⁰ Hildebrand was more concerned with limited proposals to renew antitrust applications to four major problems: national-emergency strikes, make-work rules, direct efforts to control the product market, and the effects of collective bargaining upon wages. These problems he considered to be serious, and he accurately predicted that they would become more acute in the 1960's.

Regarding the problem of strikes, Hildebrand first observed "strikes are essential to collective bargaining while collective bargaining continues to be national policy."²¹¹ Correction of abuses, he thought, should be left to the legislature rather than the courts. But in any event, "antitrust supplies no solution." What it would do is to resurrect the old judicial concept that obstruction of production and transit is a restraint of trade, which would outlaw many strikes unqualifiedly."²¹² And if the courts were to temper

this by a test of intent to control the product market, they would again make labor policy, "undoubtedly in the narrow and haphazard fashion" of the earlier days.²¹³

Recognizing that make-work policies cover "a host of complex and vexing problems," Hildebrand rejected the blanket application of antitrust laws to these rules as "far too sweeping." He cautioned against assigning to the courts "the impossible technical burden of segregating licit from illicit strikes and supportive union activities, in a field in which the judiciary is notoriously inexpert."²¹⁴ He recommended, instead, "less risky alternatives," including giving voluntary methods "another chance, through extended mediation and bargaining, using 'adopted' neutrals and study committees."²¹⁵

In respect of union attempts, through strikes and collective agreements, to control the product market, Hildebrand noted "a measure of agreement that the consumer interest is predominant."²¹⁶ He seemed to agree with Cox²¹⁷ that what is needed is a precise guide for the courts in the form of an explicit statutory declaration distinguishing protected union activity from efforts to rig the product market. "Agreements with employers to fix prices, limit production, or close off access to a market would become illegal, and strikes, boycotts, and other concerted acts to compel such agreements would also be illicit."²¹⁸

On the subject of the alleged monopoly power of unions in the labor market itself, Hildebrand first summarized the arguments of the "limitists," who favor abolition of multiproduct or multi-industry unions, such as the Teamsters, as well as all industry-wide unions:

Multi-industry and industry-wide unionism yield extra monopoly gains by reducing indirect competition among substitutes—through the elimination of non-union products and the establishment of uniform wages and conditions. The consequences have been adverse to the economy in three ways: major distortions in relative wages and reduced national income; sustained inflationary pressures from wage costs; and damaging large-scale strikes. . . . The remedy is to break the monopoly power of multi-employer unions, by limiting labor organizations to the plant or company level, by prohibiting collusion among them, and by outlawing employer-bargaining associations.²¹⁹

Hildebrand rejected this "radically utopian" approach, which would conserve a competitive system by undertaking "a major reconstruction of unionism, bargaining institutions, and the entire body of labor law, breaking decisively with the past."²²⁰ Moreover, he considered that localized or "enterprise" unionism would probably create more problems than it solved, the most serious being the destruction of the "stabilizing role of the national union."²²¹ Hildebrand's quarrel with the limitist approach was not over "its sound technical critique of multi-employer unionism, nor . . . its proper concern about the adverse economic consequences of present collective bargaining"; rather, he was convinced that the proposed cure "may prove worse than the disease."²²² It would lead, he thought, to destruction of the present balance of political power and government intervention in "disvestiture proceedings" against national unions and in enforcement of noncollusive behavior that would result in concentration of power in the public sector instead of in the private sector.

In sum, Hildebrand recognized deficiencies in present controls of union activities and collective bargaining agreements that tended to enhance monopoly powers to the detriment of consumer interests. He argued, however, that the proper solution lay in more carefully drafted legislation, rather than in granting wider discretion to the courts. And in respect of such legislation, he concluded that "antitrust has little to contribute but confusion."²²³

Ralph Winter also provided a penetrating analysis of the application of antitrust standards to union activities, premising his discussion on the irreconcilable conflict between competition and collective bargaining. He noted that the Sherman Act and the NLRA "fail even to acknowledge each other's existence or the possibility of conflict," and added that because of "the irreconcilable nature of the policy conflict and the statutory indifference to the problem, there is no principle upon which we can distinguish 'legitimate' collective bargaining activity from 'illegitimate' monopolization."²²⁴ What the Supreme Court has always done, said Professor Winter, is to "make an unprincipled and largely arbitrary judgment as to the legality of the activities involved" on a case-by-case basis.²²⁵ But "[t]o attempt solutions of these complex problems through a series of unprincipled

decisions is to ignore an important restraint on the judicial process derived from the discipline of . . . law itself." Decisions should be governed by "generalized principle" and like cases should be treated alike. "An *ad hoc* approach abandons this goal and . . . tends to open the door to every abuse from bribery to usurpation of power."²²⁶

Winter also pointed out, prophetically, that unprincipled decisions are not nearly so dependable a means of striking a pragmatic balance between competition and collective bargaining as is sometimes supposed. "[I]f a future court gets the urge to be a little less hospitable to collective bargaining or has a more expansive view of what is [a] flagrant [breach of the antitrust laws], it will not have to overrule much [to carry the *Allen-Bradley* decision much further], no matter which escape route the Court uses in today's hard case. The absence of generalized principle to be derived from past decisions, therefore, can screen radical shifts in the future."²²⁷

Winter concluded that whereas "courts should emphasize and illuminate, rather than attempt to resolve," the legal problems involved in striking a balance between the conflicting policies represented by the Sherman Act and the NLRA, "Congress can and should" undertake the latter process.²²⁸

What Winter had predicted came to pass in 1965, when the Supreme Court handed down its decisions in the *Pennington* and *Jewel Tea* cases. *Pennington* involved an arrangement between the United Mine Workers (UMW) and a number of large companies organized in employers' associations that was ostensibly designed to eliminate overproduction and preserve labor peace. In exchange for increased wages the UMW agreed to allow rapid mechanization of the mines and to impose the wage rates on smaller companies despite their inability to pay. A majority of the Court held that the UMW was not exempt from antitrust liability, despite the fact that the agreement concerned wages, a mandatory subject of bargaining under the NLRA. *Jewel Tea* involved a union marketing-hours restriction, which was forced upon all the Chicago retailers of fresh meat, that forbade the sale of meat except between the hours of 9:00 a.m. and 6:00 p.m. Following extended multiemployer negotiations with the union, all

but two markets agreed to the restriction. Jewel Tea resisted, but eventually capitulated when confronted by a strike threat. In this case the Court held, again by a divided vote, that the union had not violated the antitrust laws. Inasmuch as the opinions in these two cases reflect three quite different approaches to the problems raised, none of which was supported by a majority of the Court,²²⁹ their significance and probable impact elicited considerable scholarly comment and speculation.

In a brilliant and exhaustive article, written just before the Supreme Court's decisions in *Pennington* and *Jewel Tea* were handed down, Professor Meltzer recommended some "extremely limited" policy changes in the form of "legislation that would apply the Sherman Act to direct restraints by unions and prices, productions, and sales of employers' final products, [but would also] . . . make it clear that collective bargaining over wages, hours, work loads and work sharing are exempt from the Sherman Act."²³⁰ He thought it clear, however, that "general antitrust proposals are not the answer to the problem of 'excessive' union power and . . . that the problem should be reexamined in the context of particular bargaining relationships and jurisdictional patterns."²³¹

In an "Epilogue" to his article, written after the announcement of the *Pennington* and *Jewel Tea* decisions, Meltzer found more to criticize than to praise in the Court's various opinions. He acknowledged that Justice White's opinion in *Jewel Tea* "has, at least, the virtue of acknowledging that the Court must somehow balance the conflicting objectives of our national policies," although the balancing task is easier to state than to apply. Also, Meltzer felt that the opinions of Justices White and Douglas, "read together, have supplied one important and desirable clarification," by showing that a majority of the Court "rejects the formalistic distinction between parallel collective bargaining with individual employers and bargains by employer groups—a distinction that disfigured *Allen-Bradley*."²³²

Nevertheless, Meltzer found the opinions in the two cases "disappointing" because they "failed to shed much light on a dark corner of the law [or] . . . to exhibit fruitful internal communication or even a serious effort by the members of the Court to grap-

ple with the problems raised by the competing approaches of their colleagues and by the precedents." He predicted a "substantial consensus that Congress should attempt to draw clearer lines and that its continued abdication will confront the Court with intractable problems."²³³

To Professor Summers the most salient feature of the two anti-trust decisions was that they both dealt with problems "well within the reach" of the NLRA. "The Court's test of the legality of the collective agreement is controlled by that Act; indeed, the kinds of conduct which the Court finds violative of the anti-trust laws involve unfair labor practices [i.e., failure to bargain in good faith]."²³⁴ Thus, the employer plaintiffs in these cases "would have had potential remedies before the NLRB," and the Court need not have allowed them "under the guise of the anti-trust laws, to litigate essentially the same issues in the district court and before a jury."²³⁵ Summers argued that the Court should have used the two cases as the occasion "to withdraw from the impossible judicial task of regulating collective bargaining under the anti-trust laws," and to declare "that the regulation of collective bargaining was solely for the provisions and procedures of the Labor Acts."²³⁶ If new laws were required, so be it; Congress, he thought, might do better than the Court and was "not likely to do worse."²³⁷

Differing with Summers, Professor Cox pointed out that the entire court had rejected the view that the issues in the two anti-trust cases fell within the exclusive primary jurisdiction of the NLRB, and argued that this view was "entirely sound," for a number of reasons:

First . . . the Board, charged with implementing one of a number of competing policies, is ill-suited to determine where it breaks off and others take over. Second, the definition of mandatory subjects of bargaining is for the courts. Third, in these cases invoking the doctrine of primary jurisdiction was a transparent device for denying injured persons a remedy. The [NLRA] . . . affords no genuine relief for antitrust violations. Since the injured person would rarely be a party to the bargaining relation, the Board's machinery would not ordinarily afford

a mechanism for obtaining a determination upon the controverted questions.²³⁸

Cox anticipated that *Pennington* and *Jewel Tea* would introduce a new period of litigation concerning the application of antitrust laws to labor unions and collective bargaining. This was so not only because the Court had split three ways, with only Justices Goldberg, Harlan, and Stewart offering a "systematic rationale," but also because there are evidently "more liberals today than heretofore who are ready to lay Brandeis' curse of bigness not only upon business organizations but upon labor unions and collective bargaining as well."²³⁹

The discussion of antitrust policy and collective bargaining is an appropriate one with which to conclude this essay. It represents one of the few areas we have covered in which significant progress was not made in the 1960's, and it is a subject that is almost certain to assume greater urgency in the 1970's. Moreover, as much or more than any other topic referred to in the foregoing discussion, antitrust policy exemplifies the continuing problem under our national labor laws of how to divide authority between Congress, the courts, and the NLRB. Finally, no subject offers a greater challenge to lawyers and economists to pool their respective insights and talents in an effort to construct a reasoned and principled framework for future policy development.

Footnotes

¹ Woodrow L. Ginsburg, "Unions Growth, Government and Structure," in *A Review of Industrial Relations Research*, Vol. 1 (Madison, Wis., IRRA 1970), pp. 207-60.

² James L. Stern, "Collective Bargaining Trends and Patterns," Ch. 1.

³ Archibald Cox, *Law and the National Labor Policy* (Los Angeles, UCLA Institute of Industrial Relations, 1960).

⁴ 29 U.S.C. §§ 101-15 (1964).

⁵ 49 Stat. 449, as amended 29 U.S.C. §§ 151-87 (1964) (NLRA).

⁶ 29 U.S.C. §§ 151-87 (1964) (LMRA).

⁷ 29 U.S.C. §§ 401-531 (1964) (LMRDA).

⁸ 42 U.S.C. §§ 2000e-2000e-15 (1964).

⁹ Exec. Order No. 11,491, 3 C.F.R. 191 (1969).

¹⁰ 84 Stat. 719 (1970).

¹¹ Only 31 of the 50 states have collective bargaining laws for public employees.

¹² 45 U.S.C. §§ 151-88 (1964) (RLA).

¹³ Act of Aug. 28, 1963, Pub. L. No. 88-108, 77 Stat. 129.

¹⁴ *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960).

- ¹⁸ *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, (1962).
- ¹⁹ 15 U.S.C. §§ 1-7 (1964).
- ²⁰ 15 U.S.C. §§ 12-27 (1964).
- ²¹ *United States v. Hutcheson*, 312 U.S. 219 (1941).
- ²² *Allen Bradley Co. v. Local 3, IBEW*, 325 U.S. 797, 810 (1945).
- ²³ George H. Hildebrand, "Collective Bargaining and the Antitrust Laws," in *Public Policy and Collective Bargaining*, Joseph Shister, Benjamin Aaron, and Clyde W. Summers, eds., IRRA Series (New York, Harper & Row, 1962), p. 162.
- ²⁴ *United Mine Workers v. Pennington*, 381 U.S. 657 (1965); *Local 189, Amalgamated Meat Cutters & Butcher Workmen v. Jewel Tea Co.*, 381 U.S. 676 (1965).
- ²⁵ Sanford Cohen, "An Analytical Framework for Labor Relations Law," *Industrial and Labor Relations Review*, Vol. 14 (April 1961), pp. 350-62.
- ²⁶ Elias Lieberman, *Unions Before the Bar* (New York: Harper and Bros., 1946).
- ²⁷ Charles O. Gregory, *Labor and the Law* (New York: W. W. Norton, 1946).
- ²⁸ Cohen, *op. cit.*, p. 351.
- ²⁹ John K. Galbraith, *American Capitalism* (Boston: Houghton Mifflin Co., 1952).
- ³⁰ Cox, *op. cit.*, pp. 18-19.
- ³¹ *Ibid.*, p. 19.
- ³² *Ibid.*, pp. 21-22.
- ³³ *Ibid.*, p. 45.
- ³⁴ *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957).
- ³⁵ Cox, *op. cit.*, p. 85.
- ³⁶ *Ibid.*, p. 111.
- ³⁷ Joseph Shister, "Some Trends in Collective Bargaining," in *NYU Thirteenth Annual Conference on Labor* (New York: Matthew Bender, 1960), p. 17.
- ³⁸ Independent Study Group, *The Public Interest in National Labor Policy* (New York: CED 1961), p. 9.
- ³⁹ Derek C. Bok, "The Regulation of Campaign Tactics in Representation Elections Under the National Labor Relations Act," *Harvard Law Review*, Vol. 78 (November 1964), pp. 38-141.
- ⁴⁰ The new policy announced by the NLRB in *Excelsior Underwear, Inc.*, 156 N.L.R.B. 1236 (1966), discussed *infra*, was a response, at least in part, to Bok's proposals, *op. cit.*, pp. 99-100.
- ⁴¹ Philip Ross, *The Government as a Source of Union Power* (Providence: Brown University Press 1965).
- ⁴² Harry H. Wellington, *Labor and the Legal Process* (New Haven: Yale University Press, 1968), p. 2.
- ⁴³ For a more detailed critique, see Theodore St. Antoine, Book Review, *Columbia Law Review*, Vol. 69 (April 1969), pp. 727-31.
- ⁴⁴ Report of Advisory Panel on Labor-Management Relations Law to the Senate Labor Committee on the Organization and Procedure of the NLRB, S. Doc. 81, 86th Cong., 2d Sess. (1960).
- ⁴⁵ *Ibid.*, p. 2.
- ⁴⁶ *Loc. cit.*
- ⁴⁷ Cornelius J. Peck, "The Atrophied Rule-Making Powers of the National Labor Relations Board," *Yale Law Journal*, Vol. 70 (April 1961), pp. 729-61.
- ⁴⁸ Bureau of National Affairs, Inc., *Labor Relations Reporter*, Vol. 42 (1958), pp. 492, 513.
- ⁴⁹ 5 U.S.C. §§ 1001-11 (1964).
- ⁵⁰ Peck, *op. cit.*, p. 752.
- ⁵¹ *Ibid.*, p. 753.
- ⁵² *Op. cit.*
- ⁵³ *NLBR v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).
- ⁵⁴ Jay S. Siegel, "Problems and Procedures in the NLBR Election Process," in

Southwestern Legal Foundation, *Labor Law Developments 1968* (New York: Matthew Bender 1968), p. 49.

⁵³ *Loc. cit.*

⁵⁴ NLRB Annual Report (June 1968), p. 1.

⁵⁵ John H. Fanning, "The Taft-Hartley Act—Twenty Years Later," in *NYU Twentieth Annual Conference on Labor* (New York: Matthew Bender 1968), p. 34.

⁵⁶ *Loc. cit.*

⁵⁷ *Ibid.*, p. 35.

⁵⁸ *Loc. cit.*

⁵⁹ Ross, *op. cit.*

⁶⁰ Section 8(5) of the Wagner Act made it an unfair labor practice for an employer "to refuse to bargain collectively with the representative of his employees, subject to the provisions of section 9(a)." This provision was incorporated unchanged in the Taft-Hartley Act as § 8(a)(5), and a corresponding duty to bargain was imposed on unions by § 8(b)(3).

⁶¹ Ross, *op. cit.*, p. 231.

⁶² *Ibid.*, p. 239.

⁶³ *Ibid.*, p. 263.

⁶⁴ *Ibid.*, p. 265.

⁶⁵ *Ibid.*, p. 243.

⁶⁶ Theodore J. St. Antoine, "A Touchstone for Labor Board Remedies," *Wayne Law Review* Vol. 14 (Fall 1968), p. 1056.

⁶⁷ *Ibid.*, pp. 1056-58.

⁶⁸ Stephen I. Schlossberg and John Silard, "The Need for a Compensatory Remedy in Refusal-to-Bargain Cases," *Wayne Law Review*, Vol. 14 (Fall 1968), p. 1060.

⁶⁹ Kenneth C. McGuiness, "Is the Award of Damages for Refusals to Bargain Consistent with National Labor Policy?," *Wayne Law Review*, Vol. 14 (Fall 1968), p. 1103.

⁷⁰ James G. O'Hara and Daniel H. Pollitt, "Section 8(a)(3) of the Labor Act: Problems and Legislative Proposals," *Wayne Law Review*, Vol. 14 (Fall 1968), pp. 1104-25.

⁷¹ Subcommittee on NLRB of the House Committee on Education and Labor, 87th Cong., 1st Sess., Report on the Administration of the Labor-Management Relations Act by the NLRB (Committee Print 1961).

⁷² Henry Friendly, "Satisfaction, Yes—Complacency, No!," *American Bar Ass'n Journal*, Vol. 51 (August 1965), p. 719.

⁷³ *Op. cit.*, p. 27-28.

⁷⁴ Sylvester Petro, "Expertise, the NLRB, and the Constitution: Things Abused and Things Forgotten," *Wayne Law Review*, Vol. 14 (Fall 1968), p. 1126.

⁷⁵ Thomas G. S. Christensen, "The 'New' NLRB: An Analysis of Current Policy," in *NYU Fifteenth Annual Conference on Labor* (New York: Matthew Bender, 1962), p. 213.

⁷⁶ *Ibid.*, p. 235.

⁷⁷ Donald H. Wollett, "The Performance of the National Labor Relations Board—A Clinical View," in *NYU Sixteenth Annual Conference on Labor* (New York: Matthew Bender, 1963), p. 204.

⁷⁸ William P. Murphy, "The National Labor Relations Board—An Appraisal," in *Southwestern Legal Foundation, Labor Law Developments 1968* (New York: Matthew Bender 1968), p. 148.

⁷⁹ *Loc. cit.*

⁸⁰ *Ibid.*, pp. 148, 150.

⁸¹ The literature on fair employment practices contains a much higher proportion of books than the literature on labor relations. The following constitute a representative sample of books published in the 1960's: Ray Marshall, *The Negro and Organized Labor* (New York: John Wiley & Sons, Inc., 1965);

Michael I. Sovern, *Legal Restraints on Racial Discrimination in Employment* (New York: Twentieth Century Fund, 1966); Paul Bullock, *Equal Opportunity in Employment* (Los Angeles, Institute of Industrial Relations, 1966); and F. Ray Marshall and Vernon M. Briggs, Jr., *The Negro and Apprenticeship* (Baltimore: Johns Hopkins Press, 1967). Three collections of essays, *Legal Aspects of the Civil Rights Movement*, Donald B. King and Charles W. Quick, eds. (Detroit: Wayne State University Press, 1965), *The Negro and Employment Opportunity*, Herbert R. Northrup and Richard L. Rowan, eds. (Ann Arbor, Bureau of Industrial Relations, 1965), and *Employment, Race, and Poverty*, Arthur M. Ross and Herbert Hill, eds. (New York: Harcourt, Brace & World, Inc., 1967), also dealt in varying degrees with discrimination in employment and with equal opportunity legislation.

⁵¹ Marshall, *op. cit.*, p. 300.

⁵² E.g., National Commission on Technology, Automation, and Economic Progress, *Technology and the American Economy*, Vol. 1 (February 1966), pp. 23-26; Willard Wirtz, Remarks at White House Conference on Civil Rights, November 17-18, 1965, quoted in *Monthly Labor Review*, Vol. 89 (January 1966), p. 14.

⁵³ Sovern, *op. cit.*, p. 206.

⁵⁴ *Ibid.*, p. 211.

⁵⁵ E.g., *Steele v. Louisville & N.R.*, 323 U.S. 192 (1944), *Graham v. Brotherhood of Locomotive Firemen*, 338 U.S. 232 (1949); *Syres v. Oil Workers*, 223 F.2d 739 (5th Cir.) *rev'd per curiam* 350 U.S. 892 (1955).

⁵⁶ Neil M. Herring, "The 'Fair Representation' Doctrine: An Effective Weapon Against Union Discrimination?," *Maryland Law Review*, Vol. 24 (Spring 1964), pp. 113-65.

⁵⁷ A good discussion appears in Sovern, *op. cit.*, Ch. 6.

⁵⁸ Compare *Miranda Fuel Co.*, 140 N.L.R.B. 181 (1962), *enforcement denied*, 326 F.2d 172 (2d Cir. 1963) with *NLRB v. Local 1637, Int'l Longshoremen's Ass'n*, 368 F.2d 1010 (5th Cir. 1966), *cert. denied*, 389 U.S. 837 (1967), and *Local 12, United Rubber Workers v. NLRB*, 368 F.2d 12 (5th Cir. 1966), *cert. denied*, 389 U.S. 837 (1967).

⁵⁹ See Sovern, *op. cit.*, pp. 156-60.

⁶⁰ *Miranda Fuel Co.*, *op. cit.*

⁶¹ *Independent Metal Workers Union (Hughes Tool Co.)*, 147 N.L.R.B. 1573 (1964); *Local 1367; Int'l Longshoremen's Ass'n (Galveston Maritime Ass'n)*, 148 N.L.R.B. 897 (1964); *Local 12, United Rubber Workers (Business League of Gadsden)*, 150 N.L.R.B. 312 (1964).

⁶² *Miranda Fuel Co.*, *op. cit.*, pp. 185-86.

⁶³ *Local 1367, Int'l Longshoremen's Ass'n (Galveston Maritime Ass'n)*, *op. cit.*; *Local 12, United Rubber Workers (Business League of Gadsden)*, *op. cit.*

⁶⁴ William P. Murphy, "The Duty of Fair Representation Under Taft-Hartley," *Missouri Law Review*, Vol. 30 (Summer 1965), p. 389.

⁶⁵ *Loc. cit.*

⁶⁶ Herbert L. Sherman, Jr., "Union's Duty of Fair Representation and the Civil Rights Act of 1964," *Minnesota Law Review*, Vol. 49 (April 1965), p. 820.

⁶⁷ Perhaps the best overall appraisal is in Sovern, *op. cit.* Ch. 3. See also, Richard B. Couser, "The California FEPC: Stepchild of the State Agencies," *Stanford Law Review*, Vol. 18 (November, 1965), pp. 187-212; Homer C. Floyd and Joseph P. Doherty, "Complaint Processing Under the Kansas Act Against Discrimination," *Kansas Law Review*, Vol. 18 (Fall, 1969), pp. 127-49; Herbert Hill, "Twenty Years of State Fair Employment Practice Commissions: A Critical Analysis with Recommendations," *Buffalo Law Review*, Vol. 14 (Fall 1964), pp. 22-69; Joseph Minsky, "FEPC in Illinois: Four Stormy Years," *Notre Dame Lawyer*, Vol. 41 (December 1965), pp. 152-81; and Arnold H. Sutin, "The Experience of State Fair Employment Commissions: A Comparative Study," *Vanderbilt Law Review*, Vol. 18 (June 1965), pp. 965-1040.

⁹⁸ Richard K. Berg, "Equal Employment Opportunity Under the Civil Rights Act," *Brooklyn Law Review*, Vol. 31 (December 1964), pp. 62-97. See also a later and somewhat more detailed article by Francis J. Vaas, "Title VII: Legislative History," *Boston College Industrial and Commercial Law Review*, Vol. 7 (Spring 1966), pp. 431-58. This issue of the journal featured a symposium on Title VII.

⁹⁹ Berg, *op. cit.*, p. 79.

¹⁰⁰ *Labor Law Reports (Employment Practices)*, Vol. 2, pp. 20, 117-121.

¹⁰¹ Pauli Murray and Mary O. Eastwood, "Jane Crow and the Law: Sex Discrimination and Title VII," *George Washington Law Review*, Vol. 34 (December 1965), p. 256.

¹⁰² See text at note 83, *supra*.

¹⁰³ See text at note 81, *supra*.

¹⁰⁴ Wellington, *op. cit.*, p. 154.

¹⁰⁵ Sam Barone, "The Impact of Recent Developments in Civil Rights on Employers and Unions," *Labor Law Journal*, Vol. 17 (July 1966), p. 440.

¹⁰⁶ R. Wayne Walker, "Title VII: Complaint and Enforcement Procedures and Relief and Remedies," *Boston College Industrial and Commercial Law Review*, Vol. 7 (Spring 1966), p. 522.

¹⁰⁷ *Loc. cit.*

¹⁰⁸ Alfred W. Blumrosen, "The Individual Right to Eliminate Employment Discrimination by Litigation," *IRRA Proceedings* (December 28-29, 1966), pp. 95-96.

¹⁰⁹ Derek C. Bok, "Discussion," *op. cit.*, pp. 99-100.

¹¹⁰ See, for example, *Quarles v. Philip Morris*, 279 F. Supp. 505 (E.D. Va. 1968); *Local 53, Int'l Ass'n of Asbestos Workers v. Vogler*, 407 F.2d 1047 (5th Cir. 1969), *supplemental relief granted*, *Vogler v. McCarty, Inc.*, 62 CCH Lab. Cas. ¶ 9411 (E.D. La. 1970).

¹¹¹ William B. Gould, "Seniority and the Black Worker: Reflections on *Quarles* and its Implications," *Texas Law Review*, Vol. 47 (June 1969), p. 1074.

¹¹² See also, Gould, "Employment Security, Seniority and Race: The Role of Title VII of the Civil Rights Act of 1964," *Howard Law Journal*, Vol. 13 (Winter 1967), pp. 1-50.

¹¹³ Alfred W. Blumrosen, "Union-Management Agreements Which Harm Others," *Journal of Public Law*, Vol. 10 (Fall 1961), pp. 360-62.

¹¹⁴ Blumrosen, "Seniority and Equal Employment Opportunity: A Glimmer of Hope," *Rutgers Law Review*, Vol. 23 (Winter 1969), p. 316.

¹¹⁵ Blumrosen, "The Duty of Fair Recruitment Under the Civil Rights Act of 1964," *Rutgers Law Review*, Vol. 22 (Spring 1968), p. 476.

¹¹⁶ *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962). This case did not, however, involve any claim that the union had violated its duty of fair representation.

¹¹⁷ *Humphrey v. Moore*, 375 U.S. 335 (1964).

¹¹⁸ Compare *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965), with *Walker v. Southern Ry.*, 385 U.S. 196 (1966).

¹¹⁹ *Vaca v. Sipes*, 386 U.S. 171 (1967). See Thomas P. Lewis, "Fair Representation in Grievance Administration: *Vaca v. Sipes*," *Supreme Court Review*, pp. 81-126.

¹²⁰ Archibald Cox, "Rights Under a Labor Agreement," *Harvard Law Review*, Vol. 69 (February 1956), pp. 630, 632.

¹²¹ Clyde W. Summers, "Individual Rights in Collective Agreements and Arbitration," *New York University Law Review*, Vol. 37 (May 1962), p. 410, n. 188.

¹²² *Ibid.*, pp. 384-85.

¹²³ Alfred W. Blumrosen, "The Worker and Three Phases of Unionism: Administrative and Judicial Control of the Worker-Union Relationship," *Michigan Law Review*, Vol. 61 (June 1963), p. 1485. Blumrosen's views on this point

were more fully explicated in his earlier article, "Legal Protection for Critical Job Interests: Union-Management Autonomy Versus Employee Autonomy," *Rutgers Law Review*, Vol. 13 (Summer 1959), pp. 631-65.

¹²⁴ Benjamin Aaron, "The Union's Duty of Fair Representation Under the Railway Labor and National Labor Relations Acts," *Journal of Air Law and Commerce*, Vol. 34 (Spring 1968), p. 206.

¹²⁵ R. W. Fleming, *The Labor Arbitration Process* (Urbana: University of Illinois Press, 1965), pp. 199-202.

¹²⁶ *Ibid.*, p. 223.

¹²⁷ *Ibid.*, pp. 206-07.

¹²⁸ W. Willard Wirtz, "Due Process of Arbitration," *NAA Proceedings* (January 30-February 1, 1958), pp. 1-36.

¹²⁹ *Ibid.*, p. 1.

¹³⁰ *Ibid.*, pp. 34, 35.

¹³¹ R. W. Fleming, "Due Process and Fair Procedure in Labor Arbitration," *NAA Proceedings* (January 25-27, 1961), p. 69.

¹³² *Ibid.*, p. 90.

¹³³ *Ibid.*, p. 91.

¹³⁴ Paul R. Hays, *Labor Arbitration: A Dissenting View* (New Haven: Yale University Press, 1966), p. 38.

¹³⁵ *Ibid.*, p. 59.

¹³⁶ See, for example, Francis A. O'Connell, Jr., "The Labor Arbitrator: Judge or Legislator," *NAA Proceedings* (January 27-29, 1965), pp. 102-39, part of a symposium on the question, "Should the Scope of Arbitration Be Restricted?," *ibid.*, pp. 102-52.

¹³⁷ *United Steelworkers v. Warrior & Gulf Navigation Co.*, *op. cit.*, pp. 581-82.

¹³⁸ Hays, *op. cit.*, p. 112.

¹³⁹ Wellington, *op. cit.*, p. 122.

¹⁴⁰ *Ibid.*, pp. 122, 123.

¹⁴¹ Harry Shulman, "Reason, Contract and Law in Labor Relations," *Harvard Law Review*, Vol. 68 (April 1955), p. 1024.

¹⁴² Bernard D. Meltzer, "Ruminations About Ideology, Law, and Labor Arbitration," *NAA Proceedings* (February 28-March 3, 1967), p. 13.

¹⁴³ 45 U.S.C.A. § 153 First (q) (Supp. 1966).

¹⁴⁴ Benjamin Aaron, "Judicial Intervention in Labor Arbitration," *Stanford Law Review*, Vol. 20 (November 1967), pp. 52-53.

¹⁴⁵ Meltzer, *op. cit.*, p. 17.

¹⁴⁶ Robert G. Howlett, "The Arbitrator, the NLRB, and the Courts," *NAA Proceedings* (February 28-March 3, 1967), p. 83 (italics in original text).

¹⁴⁷ Richard Mittenenthal, "The Role of Law in Arbitration," *NAA Proceedings* (January 30-February 2, 1968), p. 58.

¹⁴⁸ *Ibid.*, p. 50 (italics in original text). For the rejoinders of Meltzer and Howlett and a general discussion of the problem by St. Antoine, see *ibid.*, pp. 58-82.

¹⁴⁹ Michael I. Sovern, "When Should Arbitrators Follow Federal Law?," *NAA Proceedings* (April 6-8, 1970), p. 38.

¹⁵⁰ Cornelius J. Peck, "Accommodation and Conflict Among Tribunals: Whatever Happened to Preemption?," in Southwestern Legal Foundation, *Labor Law Developments 1969* (New York: Matthew Bender 1969), p. 143.

¹⁵¹ 112 N.L.R.B. 1080 (1955). This policy was reaffirmed in *International Harvester Co.*, 138 N.L.R.B. 923 (1962), *aff'd sub nom.* *Ramsey v. NLRB*, 327 F.2d 784 (7th Cir. 1964).

¹⁵² *Thor Power Tool Co.*, 148 N.L.R.B. 1379 (1964) (Member Brown dissenting).

¹⁵³ See *Carey v. Westinghouse Electric Corp.*, 375 U. S. 261 (1964).

¹⁵⁴ *Ibid.*, p. 272.

¹⁵⁵ *Westinghouse Electric Corp.*, 162 N.L.R.B. 81 (1967).

¹⁵⁶ *Transportation-Communication Employees Union v. Union Pacific R.R.*, 385 U.S. 157 (1966).

¹⁵⁷ Edgar A. Jones, Jr., "Autobiography of a Decision: The Function of Innovation in Labor Arbitration, and the *National Steel* Orders of Joinder and Interpleader," *UCLA Law Review*, Vol. 10 (July 1963), pp. 987-1040; Jones, "An Arbitral Answer to a Judicial Dilemma: The *Carey* Decision and Trilateral Arbitration of Jurisdictional Disputes," *UCLA Law Review*, Vol. 11 (March 1964), pp. 327-57.

¹⁵⁸ Merton Bernstein, "Nudging and Shoving All Parties to a Jurisdictional Dispute into Arbitration: The Dubious Procedure of *National Steel*," *Harvard Law Review*, Vol. 78 (February 1965), pp. 784-800.

¹⁵⁹ Edgar A. Jones, Jr., "On Nudging and Shoving the *National Steel* Arbitration into a Dubious Procedure," *Harvard Law Review*, Vol. 79 (December 1965), pp. 327-49; Jones, "A Sequel in the Evolution of Trilateral Arbitration of Jurisdictional Labor Disputes—The Supreme Court's Gift to Embattled Employers," *UCLA Law Review*, Vol. 15 (April 1968), pp. 877-95.

¹⁶⁰ 385 U.S. 421 (1967).

¹⁶¹ 385 U.S. 432 (1967).

¹⁶² *Jacobs Mfg. Co.*, 94 N.L.R.B. 1214 (1951), enforced 196 F.2d 680 (2d Cir. 1952).

¹⁶³ Peck, *op cit.*, p. 152.

¹⁶⁴ *Ibid.*, p. 153. A similar conclusion was reached by Dexter L. Hanley, S.J., "The NLRB and the Arbitration Process: Conflict or Cooperation," in Southwestern Legal Foundation, *Labor Law Developments 1968* (New York: Matthew Bender 1969), pp. 151-86.

¹⁶⁵ Russell A. Smith and Dallas L. Jones, "Management and Labor Appraisals and Criticisms of the Arbitration Process: A Report with Comments," *Michigan Law Review*, Vol. 62 (May 1964), p. 1116.

¹⁶⁶ *Ibid.*, p. 1153.

¹⁶⁷ *Loc. cit.*

¹⁶⁸ Smith and Jones, "The Supreme Court and Labor Dispute Arbitration: The Emerging Federal Law," *Michigan Law Review*, Vol. 63 (March 1965), p. 751.

¹⁶⁹ *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 460-84 (1957).

¹⁷⁰ Smith and Jones, *op. cit.*, p. 808.

¹⁷¹ Smith and Jones, "The Impact of the Emerging Federal Law of Grievance Arbitration on Judges, Arbitrators, and Parties," *Virginia Law Review*, Vol. 52 (June 1966), p. 912.

¹⁷² *Loc. cit.*

¹⁷³ *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962).

¹⁷⁴ "Report of Special Atkinson-Sinclair Committee," ABA Section of Labor Relations Law *Proceedings* (August 12-14, 1963), p. 226.

¹⁷⁵ *Ibid.*, p. 244. See Benjamin Aaron, "The Labor Injunction Reappraised," *UCLA Law Review*, Vol. 10 (January 1963), pp. 292-346.

¹⁷⁶ *Op. cit.*, p. 244.

¹⁷⁷ In *Lincoln Mills*, *op. cit.*, p. 457, the Supreme Court had said that "the substantive law to apply in suits under § 301(a) is federal law. . . . Federal interpretation of the federal law will govern, not state law. . . . Any state law applied . . . will be absorbed as federal law and will not be an independent source of private rights." In *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962), the Court held that state courts had concurrent jurisdiction with federal courts in § 301 cases; but in *Local 174, Teamsters Union v. Lucas Flour Co.*, 369 U.S. 95 (1962), it ruled that state courts must apply federal law in such actions. This still left in doubt whether, in § 301 actions brought in state court, an injunction should be considered a substantive remedy, governed by federal law, or a procedural remedy, governed by state law. The leading state court decision supported the latter interpretation. *McCarroll v. Los Angeles*

County Dist. Council of Carpenters, 49 Cal. 2d 45, 315 P.2d 322 (1957), *cert. denied*, 355 U.S. 932 (1958).

¹⁷⁸ Clyde W. Summers, "Labor Law Decisions of the Supreme Court, 1961 Term," ABA Section of Labor Relations Law *Proceedings* (August 6-7, 1962), p. 63.

¹⁷⁹ *Loc. cit.*

¹⁸⁰ See Benjamin Aaron, "Strikes in Breach of Collective Agreements: Some Unanswered Questions," *Columbia Law Review*, Vol. 63 (June 1963), pp. 1027-52; Bernard Dunau, "Three Problems in Labor Arbitration," *Virginia Law Review*, Vol. 55 (April 1969), pp. 427-82; Florian Bartosic, "Injunctions and Section 301: The Patchwork of *Auco* and *Philadelphia Marine* on the Fabric of National Policy," *Columbia Law Review*, Vol. 69 (June 1969), pp. 980-1017.

¹⁸¹ 390 U.S. 557 (1968).

¹⁸² 90 Sup. Ct. 1583, 1589 (1970) (Italics in original text).

¹⁸³ *Emergency Disputes and National Labor Policy*, Irving Bernstein, Harold L. Enarson, and R. W. Fleming, eds., IRRA Series (New York, Harper, 1955).

¹⁸⁴ Special mention should be made, however, of Donald E. Cullen's, *National Emergency Strikes* (Ithaca: Cornell University, 1968). Professor Cullen's review of the problem, the proposed solutions, and the literature is a model of comprehensiveness and brevity.

¹⁸⁵ Independent Study Group, *op. cit.*, p. 109.

¹⁸⁶ Stuart Rothman, "National Emergency Disputes Under the LMRA and the RLA," *Labor Law Journal*, Vol. 15 (April 1964), p. 201.

¹⁸⁷ *Ibid.*, p. 202.

¹⁸⁸ "Final Report of the Ad Hoc Committee to Study National Emergency Disputes," ABA Section of Labor Relations Law 1966 *Committee Reports*, p. 350.

¹⁸⁹ *Ibid.*, p. 351.

¹⁹⁰ *Loc. cit.*

¹⁹¹ *Ibid.*, pp. 351-52.

¹⁹² Guy Farmer, "Compulsory Arbitration—A Management Lawyer's View," *Virginia Law Review*, Vol. 51 (April 1965), p. 408.

¹⁹³ *Ibid.*, p. 409.

¹⁹⁴ David E. Feller, "Compulsory Arbitration—A Union Lawyer's View," *Virginia Law Review*, Vol. 51 (April 1965), p. 414.

¹⁹⁵ *Ibid.*, p. 421.

¹⁹⁶ Edgar A. Jones, Jr., "Compulsion and the Consensual in Labor Arbitration," *Virginia Law Review*, Vol. 51 (April 1965), p. 394.

¹⁹⁷ *Loc. cit.*

¹⁹⁸ *Loc. cit.*

¹⁹⁹ See the proposed Emergency Public Interest Protection Act of 1970 (H. R. 16226 and S. 3526), 91st Cong., 2d Sess. (1970), § 219.

²⁰⁰ Carl M. Stevens, "Is Compulsory Arbitration Compatible with Bargaining?," *Industrial Relations*, Vol. 5 (February 1966), pp. 49-50.

²⁰¹ Arthur M. Wischart, "Transportation Strike Control Legislation: A Congressional Challenge," *Michigan Law Review*, Vol. 66 (June 1968), p. 1719.

²⁰² *Ibid.*, p. 1722.

²⁰³ Bernard Goodwin and Paul P. Harbrecht, S. J., "Strikes: Trial by Battle on Due Process," *Journal of Urban Law*, Vol. 44 (Fall 1966), p. 37.

²⁰⁴ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

²⁰⁵ John L. Blackman, Jr., *Presidential Seizure in Labor Disputes* (Cambridge, Mass.: Harvard University Press, 1967).

²⁰⁶ *Op. cit.*, p. 249. We regret that space does not permit the more extensive discussion that this excellent book deserves.

²⁰⁷ For discussions of the nonstoppage strike, see LeRoy Marceau and Richard W. Musgrave, "Strikes in Essential Industries: A Way Out," *Harvard Business Review*, Vol. 27 (May 1949), pp. 287-92; George W. Goble, "The Non-Stoppage Strike," *Labor Law Journal*, Vol. 2 (February 1951), pp. 105-14; David B.

McCalmont, "The Semi-Strike," *Industrial and Labor Relations Review*, Vol. 15 (January 1962), pp. 191-208; Stephen H. Sosnick, "Non-Stoppage Strikes: A New Approach," *Industrial and Labor Relations Review*, Vol. 18 (October 1964), pp. 73-80.

²⁰⁸ Wellington, *op. cit.*, pp. 269-97.

²⁰⁹ See Benjamin Aaron, "National Emergency Disputes: Is There a 'Final Solution'?", *Wisconsin Law Review*, Vol. 1970 (No.), pp. 138-47.

²¹⁰ Hildebrand, *op. cit.*, p. 171

²¹¹ *Ibid.*, p. 172.

²¹² *Loc. cit.*

²¹³ *Loc. cit.*

²¹⁴ *Ibid.*, p. 173.

²¹⁵ *Loc. cit.*

²¹⁶ *Ibid.*, p. 174.

²¹⁷ Archibald Cox, "Labor and the Antitrust Laws—A Preliminary Analysis," *Pennsylvania Law Review*, Vol. 104 (November 1953), pp. 263-64.

²¹⁸ Hildebrand, *op. cit.*, p. 174.

²¹⁹ *Ibid.*, p. 175. See Fritz Machlup, *The Political Economy of Monopoly: Business, Labor and Government Policies* (Baltimore: The Johns Hopkins Press, 1952), pp. 275-79; H. Gregg Lewis, "The Labor-Monopoly Problem: A Positive Program," *Journal of Political Economy*, Vol. 59 (August 1951), pp. 277-87.

²²⁰ *Loc. cit.*

²²¹ *Loc. cit.*

²²² *Ibid.*, p. 176.

²²³ *Ibid.*, p. 179.

²²⁴ Ralph K. Winter, Jr., "Collective Bargaining and Competition: The Application of Antitrust Standards to Union Activities," *Yale Law Journal*, Vol. 73 (November 1963), p. 29.

²²⁵ *Ibid.*, p. 58.

²²⁶ *Ibid.*, p. 60.

²²⁷ *Ibid.*, pp. 60-61.

²²⁸ *Ibid.*, p. 66.

²²⁹ In both cases Justice White wrote the opinion for the Court, joined by the Chief Justice and Justice Brennan. Justice Douglas, joined by Justices Black and Clark, wrote separate opinions concurring in *Pennington* but dissenting in *Jewel Tea*. Justice Goldberg, joined by Justices Harlan and Stewart, wrote a separate opinion dissenting in *Pennington* and concurring in *Jewel Tea*.

²³⁰ Bernard D. Meltzer, "Labor Unions, Collective Bargaining, and the Antitrust Laws," *University of Chicago Law Review*, Vol. 32 (Summer 1965), p. 713.

²³¹ *Ibid.*, p. 714.

²³² *Ibid.*, p. 734.

²³³ *Loc. cit.*

²³⁴ Clyde Summers, "Labor Law in the Supreme Court: 1964 Term," *Yale Law Journal*, Vol. 75 (November 1965), p. 81.

²³⁵ *Loc. cit.*

²³⁶ *Ibid.*, pp. 81-82.

²³⁷ *Ibid.*, p. 82.

²³⁸ Archibald Cox, "Labor and the Antitrust Laws: *Pennington* and *Jewel Tea*," *Boston University Law Review*, Vol. 46 (Summer 1966), p. 328.

²³⁹ *Loc. cit.*

Manpower Research and Manpower Policy

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An assignment to explore and assess a decade of manpower policy research must begin with an exercise in definition. One can research manpower problems, producing findings which may or may not affect manpower policies. One can also research manpower policy either by examining problems in search for policy solutions or by examining policies to assess their effectiveness. Explicit research into manpower policy should have greater or at least more immediate impact on policy than research into problems conducted for knowledge sake, but there is no guarantee that this will be so. The essential difference is likely to be that policy research will almost inherently include some effort to see the results applied to policy.

Traditionally, a hierarchy of acceptability has existed, particularly in academic circles, between those "pure" researchers pursuing research for truth's sake and those "applied" researchers who view their search for information and insights primarily as a prerequisite to implementation in more effective policies. Perhaps other social scientists may view manpower researchers with some disdain, but in the manpower fraternity the hierarchy has been inverted. The prestige accrues to those whose research results have affected policy.

In few other fields of academic endeavor has there been such explicit concern with identifying research areas primarily in hopes of impacting upon policy and so much effort to bring that knowledge to the consciousness of the decision maker and entice him to use it.

That does not mean that all manpower research affects policy or even that it deserves to. Researchers and policymakers are separate groups and types, though there have been important areas of overlap in manpower. But there has been much built-in communication. There have been sincere attempts by policymakers to tap the research community. There have been even greater efforts of researchers to "sell their wares."

Without denigrating other efforts and groups, it seems fair to credit one piece of legislation, MDTA, and one set of "midwives," those responsible for research, evaluation, and policy planning within the U.S. Department of Labor, with more than their share of impact on both the conduct of research and its implementation in policy. Significant contributions have been sponsored by the Office of Education and the Office of Economic Opportunity. Congressional Committees and Presidential Commissions have added their share and the General Accounting Office has spawned major evaluative contributions. Foundations, particularly the Ford Foundation, began their contributions to manpower policy by funding experiment rather than research. The latter subsequently made major inputs by funding independent evaluation and exploration of policy needs and issues. Remarkably little has emerged from university funded research or from the unsubsidized curiosity of individual researchers.

The amazingly rapid switch which occurred from industrial relations research to manpower research in the early 1960s and the crowd of young researchers attracted to the field during the decade could only have been bought by an infusion of public funds and aggressive government recruitment. Interests do not normally shift that rapidly. Though the research funds were essential, so was a philosophical commitment to an "active manpower policy"—the notion that government *ought* to intervene in the labor market on behalf of those it was not serving adequately and that researchers *ought* to make their contributions. The success is relative, of course. There are still policy problems suffering for lack of research and research results lying around unutilized, but relative to comparable fields, the interaction between policy and research in manpower has been unusually great.

This review explores the relationships between research and policy within the generally accepted boundaries of the manpower field: those activities having to do with the utilization of human beings as an economic resource or the role of employment as a source of income and status to human beings. Having explored the research/policy boundaries, actual research efforts will be chosen for review by the test: "which have significantly affected the course of manpower policies and programs during the past

decade?" The review ends with some examples of significant research results not yet incorporated into policymaking and policy problems not yet adequately researched. Since the most relevant research has been sponsored from one source and that source, the Labor Department's Office of Research and Development has itself summarized and disseminated the results of that research, this review accepts no obligation to be exhaustive. Only those research efforts having the most direct impacts on policy or those best illustrating the interrelations between research and policy are cited.

Boundaries and Interrelations

Start with a definition of manpower research as the pursuit of new knowledge, through investigation or experimentation, concerning the use of human beings as an economic resource or the role of employment as a source of personal and family welfare, and policy as a definite course of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions. If one holds strictly to these definitions, the volume of research has been great while the quantity of policy has been meager. If one reduces the rigor of the policy definition to the more useful level of all of those public decisions made to undertake programs or improve actions related to manpower problems, whether or not alternatives and conditions were explicitly examined, the volume of policy probably outweighs the research. It is more important to note, however, that both policy and research can, and often do, occur independent of each other.

Policy decisions are, by definition, political decisions which may require compromises which clash with the counsel of research results. The probabilities of policy success should be increased if guided by research results, but there is no guarantee. Research is more likely to uncover and highlight a problem than it is to provide a solution. Experimentation may do the latter, but what works in an experimental and demonstration project, guided by enthusiastic and able innovators, may not be transferable to day by day administration.

Research may or may not be designed to influence policy and even if so designed, may not do so. The possible research/policy interrelationships cover a broad spectrum. Research may be pursued

for knowledge sake and never contribute to policymaking. While pursued for the same reason, research results may come to the attention of policymakers, either accidentally or because the latter pursue such knowledge and impact on policy. Policymakers' staffs, in search of sound recommendations to their principals, may be the matchmakers between research and policy. Research may be pursued entirely to enlighten policy, yet its results may never attract the attention of, or may be rejected by policymakers.

Therefore, the researcher or research administrator whose objective is to have his product affect policy, if he is to avoid frustration, is forced into merchandising his research results to bring them to the attention of policymakers in the form most likely to bring acceptance. Obtaining access to the policymaker is only the first step. He must be able to present an attractive package in language understandable to the policymaker, in a format which can highlight the policy implications of the knowledge. He must also demonstrate the proposed means of implementation and do it all within the limits of the policymaker's attention span. With all those hurdles, it is not surprising that research and policy so often travel in parallel without contact.

The chasm between research and policy is no less in manpower than any other field, but more bridges have been built. For this happy circumstance, there are many explanations. Since the problems addressed were human problems, the researchers attracted to the field have been unusually policy-oriented. Though the field is new, emerging only during the 1960s, it had important predecessors. Academically, there were the industrial relations researchers who had been traditionally as concerned with the trade union as an engine of reform as they were with the maintenance of industrial peace, both of which required policy involvement. Also, manpower became the primary jurisdiction of the U.S. Department of Labor which had in its Bureau of Labor Statistics an institution and staff with three-quarters of a century of commitment and experience in labor market analysis. BLS personnel became the nucleus of the Manpower Administration. The BLS contributions were not only research capability but a conditioning to the search for and application of fact to policy decisions within departmental discretion. Additional advantages during the period

of emerging manpower policies were (1) the circulation of academics among university, legislative staff, and federal executive posts; (2) personal friendships and the flow of informal advice between academics and Labor Department officials, growing out of the participation of both in the labor arbitration and mediation arenas; and (3) bipartisanship which characterized congressional treatment of manpower issues throughout the first decade.

Most important of all was the alertness and vigor of the staff to which research administration was assigned within the Labor Department. Rather than an academic concentration on the rigor of research methodology or a bureaucratic concern for dispensing funds in a risk-free manner, their almost total absorption from the moment manpower research funds became available was, "how could the funds be used to influence policy?"

The Manpower Development and Training Act emerged in 1962 with its Title I written primarily within the Labor Department and dedicated to research into: (1) technological changes, establishment of techniques for their detection in advance, and development of solutions to the problems of displacement; (2) study of labor mobility-restricting practices of employers and unions; (3) appraisal of "the adequacy of the nation's manpower development efforts to meet foreseeable manpower needs and recommendation of needed adjustment"; and (4) dissemination of the information thus obtained. Through the various reorganizations from the Office of Manpower, Automation, and Training; the Office of Manpower Policy Evaluation and Research; and the Office of Research and Development, the same leadership, drawn largely from BLS, pursued a steady course, attempting to foresee policy issues and have information available at the critical moments.

At the same time, MDTA administrators in the Labor Department went far beyond congressional authorization to establish an experimental and demonstration program. In explosive areas related to disadvantaged youth, in particular, there did not appear to be time to seek information on a problem before trying solutions. Prior to the passage of the Economic Opportunity Act, there was no other source of funding for pilot projects. Initially, there was little effort to integrate a research component into the projects.

The committed and concerned staff was more oriented toward "doing good" for people than toward experimental and research designs. But they sold Congress on introducing explicit language authorizing experimentation and demonstration and then left it to their successors to build in more orderly methodology.

Other agencies have made important contributions to manpower knowledge, notably HEW and OEO. HEW has funded a greater volume of manpower related research, but the manpower interest was peripheral. OEO's volume was relatively small, but its philosophical commitment and legislated assignment reinforced the predilections of Labor Department officials and staff. The mandate of MDTA would have justified an across the board approach to manpower research, but, in fact, the Labor Department's Manpower Administration became another antipoverty agency and research and demonstration led in that internal reorientation. BLS studies on labor mobility, underutilization and discrimination preceded MDTA, but it was the latter which directed a systematic investigation. The focus of research became those "not making it" in the U.S. economy and emphasized the needs of the under-educated, the under-trained, the immobile and the discriminated against. Involved has been not only the explicit pursuit of knowledge as to problems and solutions but a "hidden agenda" of change in labor market institutions.

Consideration of the interrelations between research and policy must include awareness of the various levels at which research and policy can affect each other. At a political level, research may highlight problems requiring public policy decisions. However, the relationship at this level is likely to be a coincidental one. The political process responds to crises. When pressures become sufficient to generate action, there is no longer time for research to explore the full ramifications of the dimly-perceived but sharply paining problem. With the right timing research may have been responsible for the awareness of the problem. Attempts have been made within the Department of Labor to foresee policy directions with sufficient lead time to have research results ready when a new crisis confronted policy makers. The murkiness of available crystal balls has made the result only moderately better than random.

The manpower researcher with policy ambitions must also resign himself to the necessities of the political system. As pointed out above, research is much more useful for identifying problems than for designing solutions. But where research results do appear to point clearly to program needs, the researcher must accept the fact that the best designed program proposal may be unrecognizable after it passes through the necessary political trading process. Politicians may never develop the necessary technical knowledge to recognize objective needs but political acumen is their stock in trade. The interface between political policy and technical research ability is at the level of the politician's staff. The researcher who would effect policy must have the staffer's "passion for anonymity" one step further removed. Not only is he unlikely to ever wield direct power, he is also unlikely to experience the satisfaction of direct communication with the power holder. That he has not the opportunity is probably preferable because the researcher and the politician are unlikely to communicate without the staffer as interpreter.

Once a political decision has been made and a program is launched, the research/policy relationship becomes less coincidental. An Act of Congress establishing a program narrows discretion but does not eliminate it. In a sense, the legislative process is four-fold. Congress passes a law, the agency to which responsibility is assigned writes guidelines, appropriations committees often amend the intent of an Act substantially in what they choose to fund or not fund and federal, state and local administrators do not administer programs uniformly. At the program design and redesign level, it is possible to undertake research to further probe problems. Evaluative research can identify strengths and weaknesses in program concept as well as administration and suggest modification. Research projects, whether deliberately designed for program assessment or not, can bring to light new knowledge suggesting program modification. Further research, whether or not evaluative in purpose, may prove a program to be misconceived or deficient in its results. Administrative weaknesses are especially easy to uncover.

To summarize these remarks concerning the interrelations between research and policy, research can and does uncover prob-

lems requiring policy action and may suggest the appropriate action. It may do so in a deliberate pursuit of policy recommendations or as a byproduct of an abstract search for truth. Most often, however, the contribution of research to political decision is coincidental. Policy may in turn foster research in request for information concerning dimly perceived problems but is more likely to do so in the evaluation of programs already launched. Thus, the contribution of research to policy is likely to be more deliberate and less coincidental at the program and administrative decision level than in connection with political decisions.

The paths by which research affects policy are likely to be dim and hard to trace, with many informal and interwoven relationships determining which information comes to whose attention in what form. However, to the extent policy is a goal of research, meaningful impact, as well as reduced frustration for the policy-oriented researcher of research administration requires formal machinery for "selling" the implications of research results to policy makers.

Distinctions among research, experiment and evaluation are common. As research identifies problems, experimentation and development explores for and tests solutions and evaluation assesses effectiveness and feeds back information for improved policy and practice. Yet if pursuit of new knowledge is research, all qualify.

The major burden of this paper is an exploration of the extent to which research and policy have interrelated in the past decade during which manpower programs emerged. One approach to the assessment of manpower policy research would be to identify the major manpower policy decisions of the past decade and then explore the contributions of research to them. In this reviewer's judgment, those decisions would be:

1. the decision in 1961 to undertake skill training, first as an incentive to development of depressed areas, then to retrain the technologically displaced, and subsequently, as a weapon against the unemployment of under-prepared workers
2. the emphasis on youth employment problems beginning in 1963

3. the decision to shift vocational education's focus in 1963 from the skill needs of labor markets to the employment needs of people
4. the commitment in 1964 to pursue equal employment opportunity
5. the declaration of "war on poverty" in 1964
6. the 1966 decision to give the "disadvantaged" priority in all manpower programs
7. the growing demand from 1966 for program evaluation
8. the simultaneous concern from 1966 with inter-program coordination and improvement in delivery systems
9. the demand from 1967 that welfare recipients get off welfare rolls and onto payrolls
10. the enlistment from 1968 of private employer involvement
11. the rising commitment to higher education, beginning in the 1950s but extending through the following decade and only now losing impetus
12. the inauguration of a peacetime draft in the late 1950s and its extension to near permanency

Two additional issues have been nibbled at and chewed over without decision being reached:

1. to end the fatal handicap of all programs—the absence of attractive jobs for the competitively disadvantaged
2. to solidify the marshy area between income maintenance and employment with a guaranteed income, a wage supplement for the working poor and supportive services for the potentially employable

A review of manpower policy research could well be structured by considering its contribution to each of these decisions. But that would overlook the fact that the major contribution of manpower research to policy formulation is likely to be some general insights into the nature and magnitude of problems. More important is likely to be its role in the assessment, modification and improvement of program and administration.

Alternatively, a review of manpower policy research could be structured around the policy functions rather than the political decisions of manpower policy. These were:

1. the educational function in drawing political attention to manpower problems
2. the program development function in contributing to the launch of programs
3. the feedback function of evaluative research by which program shortcomings were identified and improvements recommended
4. the reassessment function leading to the questioning and testing of earlier assumptions upon which decisions had been made and programs initiated
5. the present "where do we go from here" phase during which new departures are more sought than found

There are considerable overlaps between the policy and functional approaches. Either lends itself to important distinctions between political program and administrative decisions. The policy issues approach is more discrete and serial in its chronology in comparison with the overlap in the timing during which all of the five phases occurred. The functional phasing is a logical progression through which any reasearch/policy relationship is likely to pass, but various policy issues may be at various points in that progression simultaneously. Yet, it seems more instructive to explore the role of research from the impact of the five functions, while weaving into that structure the contributions of research to the 12 major policy decisions.

Of course, manpower research was not borne during the 1960s, though it reached at least its adolescence during that period. In assessing that research which has affected policy during the past decade, it is useful to explore separately that manpower research which occurred prior to the passage of the Manpower Development and Training Act (MDTA) in 1962.

Pre-Policy Manpower Research

The term "manpower" was not evident in public policy during the 1950s, but it was not completely unknown in research. Eli Ginzberg, Henry David, and a few colleagues of the Human Resources Conservation Project and the National Manpower Council at Columbia University kept a lonely manpower vigil through the pre-1960s, with occasional forays into the field by labor economists.

Ginzberg's is the unchallenged title of Dean of Manpower Researchers.¹ In fact, during the years of academic absorption in industrial relations research, he was effectively the only consistently productive manpower researcher. Entering the professional ranks at Columbia in 1934, he was on the scene early enough to become deeply immersed in military manpower problems during the Second World War, was concerned for high talent manpower in the early 1950s, began studies into Negro employment in the mid-50s, and has maintained a full range of manpower interests from the disadvantaged to the scientist and engineer during the 1960s.²

Wight Bakke³ and William Haber⁴ can claim near equal seniority in related fields, but their interests in manpower problems per se were sporadic and involved individual rather than team research, the latter being one of Ginzberg's contributions and a major factor in his productiveness. Labor market and personnel studies by Myers, Shultz, Parnes, Palmer and others were closely related but do not fit our definition of manpower research.⁵ It is difficult to draw the line between what should and should not be considered manpower research among those who labored in the BLS prior to 1962 and then transferred as the staff nucleus of the new manpower agencies. Occasional articles in Cornell University's *Industrial and Labor Relations Review* did not fit the definition. The IRRA also dedicated a research volume to the subject in 1959.⁶

The postwar concern for the development of backward economies was another route to manpower research. While most labor economists involved emphasized the role of employee organizations, a few, notably Frederick Harbison, Charles Myers, and Herbert Parnes were drawn into concern for the role of manpower resources as such.⁷

Manpower concerns did not merit high priority in the U.S. policies, pre-1960, but what interest existed was focused on the relative supplies of scientific and technical manpower available for the competition with the Soviet Union. The legislative response was the National Science Foundation and the National Defense Education Act. The research interests were limited, diverse and unfocused.

The Ford Foundation-funded National Manpower Council, a

group of non-researchers, supported by a technically capable staff made policy contributions by marshalling the known to focus on and enlighten current issues. Its *Student Deferment and National Policy* was an appropriate issue for the Korean War Period.⁸ Its *Policy for Scientific and Professional Manpower* and accompanying conference proceedings focused early on the major manpower policy issues of the 1950s.⁹ *A Policy for Skilled Manpower*¹⁰ and *Womanpower*, each with a conference proceedings gave policy prescriptions which might have gained public attention in 1970 but little in 1954-58.¹¹ *Education and Manpower* was also before its time; 1963, 1965 and 1968 being the years in which manpower policy and education policy converged.¹² Though the federal government was deep in manpower policy by 1964, *Government and Manpower* and its accompanying proceedings volume were concerned with the utilization of manpower resources in public employment.¹³ The ten volumes and the culminating *Manpower Policies for a Democratic Society*,¹⁴ therefore, never focused on the problems which absorbed the attention of policymakers during the 1960s: the employability and employment of the unemployed and the disadvantaged. The Committee for Economic Development and the Ford Foundation also attempted to focus attention on vocational education but attracted no policy interest. If nothing is as powerful as an idea whose time is come, it follows that little attention or impact is likely to reward policy proposals out of phase with the current dialogue.

The Educational Role of Manpower Research

By the late 1950s, a persistently rising unemployment level was attracting political attention. The phenomenon went largely unnoticed by an economics profession concentrating on balance of payments and cost-push inflation issues. Politicians had more sensitive antennae and rising Democratic majorities in each congressional election signalled discontent.¹⁵

The Joint Economic Committee reached out to the universities to staff its 1957-1959 studies of Employment Growth and Price Levels.¹⁶ The context was the frequently recurring but mild recessions of the 1950s and economic growth and stability, both in prices and business activity was the goal. It was left to a Federal

Reserve Board Economist, not an academic observer to identify the phenomenon of "creeping unemployment," underlying the cyclical fluctuations. But out of the information gathered for the Joint Economic Committee studies emerged some of the seminal data which, when further developed, underlay a number of subsequent policy steps, including the "war on poverty."¹⁷

While the attention beginning to focus on unemployment was to have the greatest short-term impact on the future of manpower policy, a triumvirate consisting of Seymour Wolfbein and others within the Bureau of Labor Statistics and Eli Ginzberg from the outside, with Secretary of Labor James P. Mitchell providing the motive power, were launching an effort with a longer run orientation. Materials which had been accumulating for years were polished up for dissemination and new statistical efforts were undertaken. Covering such topics as projections of manpower requirements, demographic studies of age cohorts, technological change and employment, etc., did not specifically single out the disadvantaged for attention, but did record the basic data on unemployment, labor force participation, etc., which was critical after interest was ignited. Operational data became available in greater detail. An example was the trauma experienced by researchers in the Bureau of Employment Security when Sar Levitan as a congressional staffer released previously unpublished data on city labor market conditions in contrast to the customary statewide limitations. Protests were far less nearly a decade later when details moved to the Census tract level, at least for poverty-related indices.

The BLS pre-policy effort culminated in the widely disseminated *Manpower: Challenge of the 1960s*.¹⁸ The context was overly optimistic for the time of its release, but it spread throughout the country the "gospel" of manpower as a critical economic resource.

A promise of the Senate Majority Leader, Lyndon B. Johnson, to an AFL-CIO sponsored anti-unemployment "March on Washington" during the 1958-59 recession was the motive force behind the Special Committee on Unemployment, chaired by then freshman Senator Eugene J. McCarthy. Its research mandate consisted of the hearings about the country to "taste, smell, feel and hear

the despair of those parts of the country where men and women cannot find work," voluminous selected readings on unemployment by its Research Director, Dr. Sar A. Levitan,¹⁹ on loan from the Legislative Reference Service of the Library of Congress, and 15 commissioned papers. John Dunlop set the tone of those studies with a "think-piece" identifying the problem as class unemployment in contrast to the mass unemployment of the 1930s.²⁰ Albert Rees reviewed the concepts and techniques underlying unemployment statistics and recommended improvements.²¹ Charles Myers explored the implications of BLS labor force projections.²² Margaret Plunkett warned of the necessity of absorbing six million teenagers during the 1960s, but not with the sense of urgency the problem assumed by mid-decade.²³ At that point, the problems of the older worker seemed more pressing as the paper by Arthur and Jane Ross indicated.²⁴ Demography in the form of the post-war baby boom pushed the older worker into the background during the 1960s. Demography, appearing as falling birth rates and steadily rising longevity, may decrease the interest in youth employment problems and raise the issue of the older worker as a permanent priority for the 1970s and beyond.

Richard Wilcock's paper on "Women in the Labor Force," was another summary of available statistical material leading to policy recommendations for which the time had not come.²⁵ John Hope II made a strong statistical case for a manpower and antidiscrimination policy in favor of Negroes, but the civil rights effort was just entering the lunch counter sit-in phase.²⁶ Political pressure for a Negro employment emphasis was three years in the future.

Clyde Dankert focused on the more popular employment issue of the time, "Automation and Unemployment."²⁷ His even-tempered examination of employment trends, fear and recommendations, offered on the upswing of the "automation hysteria," was not dissimilar from the analysis and conclusion emanating six years later from the National Commission on Technology, Automation and Economic Progress.²⁸ The difference was Dankert wrote amidst rising unemployment while the Automation Commission report was accompanied by the soothing effects of rapidly falling unemployment.

"Assistance for Adjustment to Tariff Reduction" was John

Lindeman's and Walter Salant's contribution to the Trade Adjustment Act discussions.²⁹ After knocking about in policy circles for at least 15 years, the notion of special protection for workers displaced as a result of free trade policies was to become law two years later. By the decade's end, failure to apply those protections was a factor leading the historically free trade AFL-CIO to adopt a protectionist position.

Haber's treatment of the history and role of the Federal-State Employment Service was in the mainstream of discussion.³⁰ Secretary of Labor James P. Mitchell had charged in a 1958 speech pregnant with long-range implications that the Employment Service was failing in its primary role—placement.³¹ Labor market information, career guidance information, specialized placement offices for technical and professional workers and performance standards, an improved public image and more research were the supposed cures but money was not available. There was concern for the growing competition from private for profit employment agencies. Separation of Employment Service and Unemployment Insurance activities was a supposed cure. There was concern that the ES not be asked to take on special services for hard-to-place groups without the addition of funds for that purpose. The first Kennedy budget was to advance funds for many of these objectives. On the eve of manpower and antipoverty legislation, the Employment Service was being tooled up to do a better job in placement with emphasis on the better prepared.

Wilbur Cohen addressed the need for unemployment insurance reform with temporary extension for exhaustees, increased coverage and extension of benefit levels and duration as a major emphasis.³² The Problem of income maintenance for the family of the marginal worker and the family without a breadwinner and the overlapping grey area between dependence and independence occasioned little attention.

Jacob Kaufman discussed relocation and retraining needs³³ and John Fernstrom the problems of economic development in depressed communities,³⁴ while William Miernyk reported on "Foreign Experience with Structural Unemployment."³⁵ The point is that relatively few of the employment problems which would plague the 1960s were apparent at the decade's beginning, but

exploration was underway and some notions were emerging. It might have been useful to foresee the policy moves for the years ahead and have data in readiness as demanded. However, a high level of concern and a degree of consensus was necessary to turn research into policy. To both of these research could contribute but slowly.

The recommendations of both of the highly political majority and minority reports emanating from the McCarthy Committee's work were more reflective of the hearings held throughout the country than they were of the academic contributions.³⁶ Senators rarely read the latter, but they heard and felt the former. In fact, most of the recommendations were rattling around as common property long before the McCarthy hearings. The most important contributions of the Committee's work was the education of men like Joseph S. Clark, Jennings Randolph and Winston L. Prouty who were to become the nucleus of a new Senate Committee on Employment and Manpower at the beginning of a new Congress and a new administration. They came through the McCarthy Committee experience with unclear notions of the problems involved but a commitment to "do something." The remainder of their colleagues on the nine man committee were never heard of again in the manpower policy arena, but the three played major roles in subsequent events.

The Area Redevelopment Administration, the first domestic legislation of the new regime and containing manpower retraining provisions, was a product, not of research, but several years of political pressure and concern on the part of Senator Paul Douglas and others for the plight of depressed pockets within their states.³⁷ The political proposal had come first but it was strengthened by the CED depressed area studies.³⁸ The Manpower Development and Training Act (MDTA) was an extension through the McCarthy committee recommendations of the ARA experience and a Pennsylvania state program. Added was the view of political conservatives that there was no shortage of jobs, just square pegs which failed to fit the available round holes.³⁹

No research identified skill-less people, primarily technologically displaced and vacant jobs they were unable to fill, though some of the BLS material hinted at all but the latter. Most of the

evidence was anecdotal—individuals displaced with no emerging jobs to take up the slack and employers who, as always, found too few of the best workers standing in line for jobs at rates the employer preferred to pay. The House of Representatives was more enthralled with the automation issue than the Senate.⁴⁰ Popular literature had far more to do with arousing that interest than did empirical research. Until the passage of MDTA, there was no federal authorization or agency with the responsibility for generating research specifically into manpower issues.

Probably more from the long-term interests of research-oriented Labor Department personnel involved in designing the act than from any political demand, a research component was written into the new MDTA act with a clear policy emphasis: (1) evaluation of the impact of technological and related changes, establishment of techniques for their detection in advance, and development of solutions to the problems of displacement; (2) study of labor-mobility-restricting practices of employers and unions; (3) appraisal of "the adequacy of the nation's manpower development efforts to meet foreseeable manpower needs and recommendation of needed adjustment"; and, (4) dissemination of the information thus obtained.

The automation emphasis prescribed for MDTA research produced only negative policy "pay dirt."⁴¹ What it demonstrated was that technological change was not the critical variable when the objective was remedying the problems of displaced workers. What displaced them was of little significance in either protecting them from displacement or ameliorating its results. Forecasting technological change was of little help in foreseeing displacement at the firm and individual level.

The fear of technological change as destroyer of jobs and displacer of workers at an accelerating rate was never dispelled by research. Neither was the debate between those who blamed deficient aggregate demand and those who indicted structural factors as the causes for persistently rising unemployment resolved by research. Only experience, as the decline of unemployment following tax cuts and war-generated expenditures increased the rate of economic growth, could dispel lingering doubts of the efficacy of fiscal and monetary measures. But the failure of that growth

to sop up the unemployed and underemployed poor without generating politically unacceptable inflation identified the boundary between general and structural unemployment. However, Congressional hearings and special commissions did serve an educational role in helping policymakers and the public to draw appropriate conclusions from experience and observation.

Evaluation, which had its primary impact on program modification, also contributed to public and legislative education. The first Ford Foundation grant to evaluate an on-going federal program resulted in Sar Levitan's *Federal Aid to Depressed Areas*.⁴² In reviewing the background and experience of the Area Redevelopment Administration (ARA), it also evaluated, and called attention to, the first manpower program of the 1960s, the minute retraining component of ARA.

Almost simultaneously with the passage of MDTA, the Ford Foundation made a grant to the Institute of Industrial Relations of the University of California at Berkeley to do research and evaluate policy relative to the unemployment problem, by then recognized to be several years old. Fifteen individual research projects, several Ph.D. dissertations, and a spate of articles between 1964 and 1967 added to general knowledge and to the cadre of manpower researchers. However, the direct contributions to policy were educational ones from annual conferences and publications conducted under the grant, two of which brought together policy makers and researchers and the other two of which had some government researchers in session with academics.⁴³ One would be hard put to identify any direct contributions to the manpower political and program decisions which were being made throughout the same period of time. Yet the project alerted academic researchers, most with backgrounds in industrial relations where they were not accustomed to looking to the federal government for financial support. They were first exposed to the problems which readied them for a transfer of attention as the passage of MDTA made federal research funds available.

The Senate Subcommittee on Employment and Manpower in its 1963-64 "Nation's Manpower Revolution" hearings sponsored no empirical research.⁴⁴ However, it explored, to the maximum degree its budget for hearings and the interest of its members

would support, such topics as the causes of unemployment, the impact of MDTA, vocational rehabilitation, and other manpower programs, the progress of depressed areas, the role of the United States Employment Service, the employment problems of youth, older workers and minority groups, the employment impact of technological change, the outlook and impact of productivity, the manpower role of education, the relevance of various training programs, an appraisal of foreign employment and manpower experiences, the manpower practices of business firms, collectively bargained adjustments to technological change, growth needs for full employment, issues concerning scientific and technical manpower and the problems of adjustment to changes in military and space programs.

The title was better designed to attract attention than to describe the existing situation. Committee prints pulled together relevant published articles, but few except academics and lower level agency employees under duress ever read its ten volumes of hearings and ten volumes of selected readings. However, published selections from the hearings received wide circulation.⁴⁵ In total, the Congress, the administration and, to a lesser degree, the country were better informed and "manpower" was coming into focus as a policy subject and a discipline.

The series of hearings ended with legislation establishing the National Commission on Technology, Automation and Economic Progress. In an act of some kind of justice, if not poetic, the Research Director of the Subcommittee who had always been skeptical of the supposed impact of automation on employment and who had prevented consideration of the "Automation Commission" proposal throughout his tenure on the subcommittee was assigned by the Secretary of Labor to be the new commission's executive secretary. That delay and further delay in appointing members was fortuitous. The Commission's primary message, "technological change has many problems, but widespread unemployment in a rapidly growing economy is not one of them;" would not have been accepted in 1963. In 1965, the message was descriptive of what was occurring as tax cuts and Vietnam escalation drained away excessive unemployment.

It is debatable how many of the 40 commissioned studies in

the Automation Commission's six appendix volumes could be appropriately described as research and what may have been their impact on policy.⁴⁶

The fiscal policies necessary to achieve 3.5 percent unemployment in 1968 and 3 percent unemployment by 1970 with acceptable price increases were estimated. The outlook and implications of computerization, in commercial information processing networks, for process control computers in continuous process industries and fabricating industries, and technological change and employment in agriculture, banking and steelworking were studied. Estimates were made of technological displacement by industry and by establishment.

Studies were made of the pace of technological change and the rate of diffusion of invention. Evidence was found that the time elapsing between first commercial application and the point at which the innovation had diffused through the economy sufficiently to achieve certain prescribed levels was shrinking but that no new technological innovation could have a major impact upon the labor market without a decade's warning. Expectations of increased leisure were found to be overstated, largely because the necessity of choice between higher incomes and more leisure.

Other commission studies focused upon the potential of computers and other exotic technology for educational reform and for meeting various pressing public needs in urban planning, housing, pollution control, medical services, transportation, waste disposal, crime control and similar areas not directly manpower oriented.

All of the Commission studies were deliberately calculated to have a calming effect upon the exaggerated fears which had instigated the Commission's creation. Important potential technological contributions were identified and attention was directed to most of the environmental issues which erupted into public attention in the late sixties, but the time was not ripe.

But to appraise the policy impact, few even of the Commission's members read the studies. They influenced the Commission's report through the staff. Some academic and a few journalists read some of the studies and some were reprinted elsewhere so that mention of them appeared from time to time in various contexts.⁴⁷

The Commission's report, *Technology and the American Economy* was the first of a now lengthy list of reports of commissions and task forces appointed to relieve political pressures or delay political decisions which proved embarrassing to the appointer of the commission.⁴⁸ The remembered contribution of the commission was its recommendations that the federal government become the "employer of last resort" for those not absorbed by the orthodox labor market and that it guarantee incomes to families without breadwinners.⁴⁹ Scripture was written when the executive secretary, in response to Commission demand, pulled almost "out of the air" the figure of 5.3 million as the public service job potential, a figure which has been constantly quoted in discussions of public service employment since. The product of a year's rather intensive effort was some marginal increment in the education of the Congress and the country to the realities of its manpower problems.

One final product deserves mention among the research contributions during the educational phase. The National Planning Association had undertaken to cost out in dollar terms the achievement of the goals proposed to the Eisenhower-appointed Commission on National Goals.⁵⁰ Coincident to the creation of the Automation Commission, the Labor Department funded a companion volume calculated to cost out the goals in terms of the manpower resources required to achieve them.⁵¹ The primary motivation was to dispel the myth being perpetrated during the early sixties that manpower was in danger of becoming redundant. The two volume work, of course, demonstrated that the nation had neither the dollars nor the manpower to do everything it wanted all at once, a lesson that was learned better in domestic than in foreign affairs.

It was not a discrete educational phase of manpower research which concluded in 1965. The same process occurred for subsequent policy decisions and the plight of overspecialized, college educated manpower appears to be currently in the educational phase. However, by 1965, the country was well aware, in general terms, of the employment plight of the disadvantaged and was more interested in designing, launching and improving programs.

Discussion of the educational impact of manpower research

cannot end without some mention of the role of the *Manpower Report of the President*, required by MDTA and now having completed its eighth year. As a compendium of information on current manpower problems, its impact is probably greater on the country at large and particularly the academic community than it is on Congressional and administration policymakers. It has never become the accepted voice of the Administration in manpower affairs as the *Economic Report* has in its field. It emanates from a Cabinet department in competition with other departments and executive offices rather than from the Executive Office of the President. There has always been the hope in the Labor Department that it might rise to the eminence of policy declaration. But the nearer it approached policy discussions, the more difficult its progress through the interagency and White House clearance process. There was an attempt to establish the tradition of review of the report by the relevant Congressional committees, the equivalent of the Joint Economic Committee treatment of the *Economic Report*, but the departure of the committee staffers who instigated the process was the signal for its demise. The report has progressed to reiteration and support of presidentially declared policy and reviews of program performance. Its discussions of manpower problems are often preludes to policy developments. For the most part, however, its role (not to be downgraded in importance) is general education rather than policy discussions on manpower problems.

The Role in Program Development

Congressional investigations and commission reports, much of it serving to disseminate and popularize the results of empirical research, but not the research itself, educated the country to the need for manpower policy. They also suggested some directions for action and raised others as controversial issues. Research, in general, had even less to do with the design and development of the earliest manpower programs. Until MDTA, there was no focal point of support and encouragement for manpower research, and few mature or new researchers had yet moved into the field. The programs tended to emerge from the unsupported assumptions of political leaders and their staffs about the nature of manpower problems and likely cures. Both because this general conclusion

requires documentation and because there were notable exceptions, the relation of research to the origin of major programs is reviewed.

The manpower training provisions of the Area Redevelopment Act were a direct adoption into federal law of a Pennsylvania state program to include trained-to-order manpower within its industrial promotion package, brought to national attention by a 1957 report of the Senate Banking and Currency Committee.⁵² MDTA was a merger of that program with the unsupported notion that there were as many vacant jobs as unemployed people if the "square pegs-round holes" problem could be solved.⁵³ The McCarthy Committee experience made an educational contribution by raising the issues and interesting key senators. But the decision to undertake a federally supported remedial skill training program preceded research into the need for such a program, other than some observation of European experience.

The second major manpower policy decision of the 1960s—awareness of growing youth unemployment—required no special research. The evidence of rising unemployment rates was enough. The impact on policy during 1963–65 of pressures easily foreseen in 1947 is a useful illustration of a point worth reiterating about the interrelations of research and policy. Anyone who could add small increments to the base number 1947 could have foreseen problems for the elementary schools in 1953, the secondary schools in 1959 and the labor market in 1963. Yet making the projections did not alert policymakers to the need and opportunity to precede the crises which would force action.

Even in 1963, the signal of rising unemployment rates and warnings of "social dynamite" were insufficient to pass a Youth Employment bill. There was support for expanding the youth proportion of MDTA. Most important in 1963, the rising concern for youth was enough to tip the scales in the direction of a major reform in vocational education which had been festering for years awaiting an appropriate setting. Research contributed primarily in the form of support to an early study Commission. The basic objectives and format of federal support to vocational education had been set in 1917 and had never varied. One of the first acts of President John F. Kennedy was to direct the establishment of

a Panel of Consultants on Vocational Education, knowledgeable in themselves and supported by research staff.

After deliberating for more than a year, panel members were convinced that two principal failures of vocational education restricted its ability to match the requirements of the fast-changing economy and technology to the vocational needs and desires of individuals: (1) lack of sensitivity to changes in the labor market and (2) lack of sensitivity to the needs of various segments of the population.⁵⁴ More specifically, the panel identified the following limitations:

1. Compared with existing and projected needs of the labor force, enrollments of in-school and out-of-school youths and adults were too small.
2. Service to the urban population, with an enrollment rate of 18 percent in the high schools of the large cities, was grossly insufficient.
3. Most schools did not provide efficient placement services, and few schools had organized programs for systematic follow-up of students after graduation or placement.
4. Programs for high school youths were limited in scope and availability; about one-half of the high schools offering trade and industrial education had four or fewer programs most of which involved a narrow range of occupations; high schools failed to provide training programs for groups or families of occupations.
5. Research and evaluation of programs were neglected.
6. Adequate vocational education programs for youth with special needs were lacking; in many respects, vocational education had become as selective as academic education with regard to accepting students.
7. In many states, youths and adults did not have significant opportunities for postsecondary vocational instruction; curriculums tended to concentrate on the "popular" technologies, particularly electronics; insufficient funds and restrictive federal legislation inhibited the development of certain types of programs, such as office occupations.

8. There was a lack of initiative and imagination in exploring new occupational fields. Severe limitations existed in regard to related training for apprentices, such as adequate classrooms and appropriate instructional equipment; craftsmen used as teachers for related training and skill training of apprentices and journeymen were not afforded adequate opportunities to learn modern instructional methods.
9. Many school districts were too small to provide diversified curriculums or proper supervision of vocational teaching activities.
10. Curriculum and instructional materials had not been developed for many of the new occupations.

In its recommendations, the panel recognized that the legislation under which vocational education had been operating since 1917 was responsible, to a large degree, for the slow responses to the changes in the labor market. The programs for which federal funds were available represented a very narrow part of the total spectrum of occupations. The panel also charged that the leadership in the area of vocational education had not shown sufficient imagination and initiative to adapt vocational education to the new challenges of a fast-changing economy.

The result was an Act which attempted to shift from the traditional strategy of training in specific occupational categories in demand in the labor market to a focus on the employment needs of people with emphasis on the disadvantaged.

The Economic Opportunity Act had a more direct research ancestry.⁵⁵ Reports done for the Joint Economic Committee's Economic Growth and Stability study identified a substantial impoverished population who had slipped from view in the affluent society since the depression in the previous generation.⁵⁶ Journalists like Michael Harrington and Dwight McDonald were more effective in "softening up" the body politic for a war on poverty.⁵⁷ But it was economists like Robert Lampman, who made the Joint Economic Committee study and then moved to a staff position on the Kennedy Council of Economic Advisors, who started the administrative machinery grinding.

The major problem faced by the designers of the antipoverty

program was that a policy decision had been made to "declare war on poverty" with no notion of what the weaponry or logistics were to be. The planners' ideal—identify a problem, then design a solution—turned out to be far more difficult than the customary procedure, design a program, then see if it fits the undefined problem.

Research had little, if anything, to do with the program design. The Job Corps and the Neighborhood Youth Corps were throwbacks to the Civilian Conservation Corps of the 1930s, resurrected as a proposal by Senator Hubert H. Humphrey in the late 1950s.⁵⁸ The Community Action Program emerged from the Ford Foundation's "grey areas" project and the President's Committee on Juvenile Delinquency's experiences, along with certain ad hoc local efforts which were adopted by the Labor Department as experimental and demonstration projects. The Work Experience and Training Program was an expansion of an existing but minute HEW program for welfare recipients, and so on. MDTA experiences and research under it were too new for major inputs as the Act was formulated in 1963 for passage in 1964. However, more from internal experience than research, Labor Department analysts were able to suggest provisions for technical assistance, staff training, research, experiment and demonstration provisions and reservation of funds for discretionary federal use.

Title VII of the Civil Rights Act, which sought to outlaw racial discrimination in employment, had totally political origins, though increasing amounts of data on minority unemployment were modestly available for statistical support of the proponent arguments.⁵⁹ Operation Mainstream, New Careers and Special Impact as additions to the Economic Opportunity Act originated as proposals from a variety of minds and, at least in the New Careers case, from such experimental and demonstration experience but without the benefit of research.⁶⁰ All of the available data would have ruled against the Work Incentive program, minimizing the employability potential of welfare recipients, but congressional prejudices were stronger than facts.⁶¹ Not so the Family Assistance Plan or the Opportunities for Families or whatever the title turns out to be. Despite the rhetoric about getting lazy people off welfare rolls, its objective is income supplements for the working poor.

It emanates from solid research on the number working full time, full year at below-poverty wages and on the unemployability of welfare recipients.

The policy decision which launched the Concentrated Employment Program was almost solely the contribution of a decisive Secretary of Labor who, in fact, had little patience with withholding new policy actions to await research results. Nevertheless, the decision was based on the results of several E&D projects, particularly the Chicago YMCAs Jobs Now project, documentation by research-oriented staff of the thinness of the impact of widely dispersed funds and the early findings of statistical studies identifying high "subemployment" in central cities.

For a researcher, there is some reluctance to admit how few of the manpower programs legislated during the 1960s had their base in research identifying either problems or solutions.

Few researchers were committed to manpower studies and only with the advent of the manpower programs was there a source for funding and promoting manpower research. The later the program in the manpower history the more likely it was to have a research background. Also, the more policy decisions emerged internally from administrative rather than legislative action, the more likely research was to have contributed. In 1963, military officers alerted Labor Department officials to the extraordinary fact that one-half of all Selective Service selectees were being rejected for physical and educational reasons. A hastily mounted internal research effort by the Labor Department found that, when volunteers were included, the overall rejection rate was *one-third of a nation*.⁶² The first result was an almost meaningless effort to refer all rejectees to the Employment Service for remediation or placement.⁶³ More meaningful in the longer run was Project 100,000, the decision to admit 100,000 per year with slightly poorer mental and educational qualifications and observe their performance.⁶⁴

The Labor Department, through the United States Employment Service, had established apprentice information centers throughout the country to aid youth, minority and otherwise, in gaining access to apprentice programs. A city-by-city review of this experience by Ray Marshall and Vernon Briggs not only demonstrated that

their centers were accomplishing little and that discrimination in apprentice selection was rife, but identified the one program that did seem to have promise.⁶⁵ A handful of aggressive young blacks in New York City working under the aegis of the Worker's Defense League were recruiting other young blacks of considerable promise and coaching them until they were able to corner the top slots on most rosters of apprenticeship applicants. This Apprentice Outreach program then spread nationwide, as the Department of Labor's prime weapon in the fight for equal employment opportunity in construction.⁶⁶ Involved was a carefully planned strategy by Labor Department research administrators to bring the research results in dramatic form to the attention of the Secretary of Labor, achieving a drastic revision of Labor Department policy and practice.

By 1967, a certain amount of disillusion was setting in vis-a-vis manpower training programs. They seemed to work well in suburban and modest sized city settings where job location and residency of target populations were not too discontinuous. But for the central city residents who had become the prime targets of manpower programs, completion of a skill training program was rewarded too often only with a hunting license to search for jobs which were out of reach. A sub rosa debate had continued from the formulation of the antipoverty program. Were the obstacles to employment inherent in the individual's lack of education, skills and incentive, or were they institutionalized into the structure of the labor market—was the individual at fault or was the system? Research into the hiring and internal promotion practices of firms and into the employment and unemployment patterns of ghetto labor markets by Peter Doeringer and Michael Piore were influential among those pressures shifting the weight of opinion.⁶⁷ Training programs had assumed the former, now attention shifted to the hiring system.

Kalacheck, Knowles, Reder and others had posited at the beginning of the sixties, by deduction rather than research, that the labor market could be usefully viewed as a queue with workers ranked according to their productivity.⁶⁸ Employers were expected to move smoothly from one member of the queue to the next as economic growth added to the purchasing power of their customers.

Mangum, observing experience in the early days of the manpower programs thought it more useful to emphasize discontinuities in the system. He saw a queue which was also a "shape-up" with workers having access to jobs ranked by employers' subjective judgments.⁶⁹ All employers were viewed as an aggregate hiring boss. At the back of the line might be those with limited education, skills and experience, but it was just as likely to be those whose age or skin color clashed with the employer prejudices. Discontinuities occurred because, as an alternative to digging deeper into the queue, individual employers could meet expansion needs by competing for those at the front of the line, with inflationary effects. But on the other hand, operating on the specific reasons for low ranking in the queue—training, remedial education, improved labor market services, forbidding discrimination, subsidizing employment—could make it possible for some to improve their ranking and become more competitive. But there would always be those at the back of the line dependent upon subsidized employment, publicly created "last resort" jobs and income maintenance.

Piore and Doeringer added two additional notes of sophistication to the queue concept: ⁷⁰ (1) Employers, too, were in a queue. Workers chose among jobs and between employment and non-employment and some jobs had few takers or experienced high turnover; (2) there was a primary labor market of good jobs with reasonable pay, security, advancement and status and a secondary labor market of jobs lacking all of these prerequisites. And there was a practically impervious wall between the two markets. The first was clear from the fact that certain jobs "went begging," even in areas of high unemployment or low labor force participation. The discontinuity and imperviousness of the wall between the hypothesized dual markets was less firmly demonstrated. The policy recommendation was clear, however. Particularly for semi-skilled and unskilled jobs, the system was more at fault than the worker. For those entry level jobs which people normally entered without special training, it was more logical to focus on reforming the labor market and the employer than on changing the worker.

Such a momentous policy decision rested upon more than one series of a research projects, of course. The Chicago Labor Market

Studies, headed by George Shultz and Albert Rees, had reiterated the message that job access was primarily an informal system of "who do you know?"⁷¹ Alice Kidder had demonstrated that Negroes and other minorities had less access to the informal machinery than non-minority workers and were forced to rely on the formal placement agencies which touched only margins of the labor market.⁷² Experimental and demonstration projects had recruited employer support and subsidized them to hire the disadvantaged and train them on the job.⁷³ There had been some experience with locating plants in ghettos, with and without government encouragement, financial support or contracts for goods and services.⁷⁴ On the basis of this experience and research, the National Alliance of Businessmen—Job Opportunities in the Business Sector (NAB-JOBS) program was launched.⁷⁵

The Monthly Job Vacancy Survey launched by the Labor Department in July 1970 was also primarily a research product. MDTA initially gained considerable conservative support based on the supposition that job vacancies equalled or exceeded the number of unemployed so that retraining could be a substitute for fiscal and monetary policies involving deficits. The consequent demand for a job vacancy series was opposed by the AFL-CIO with the argument that the tendency would be to subtract measured job vacancies from measured unemployment and reduce the commitment to do something about the latter. Despite congressional opposition from where it counted most—the Appropriations Committee—the Labor Department undertook some pilot measurements in 1965, leading toward development of methodology for a full scale effort. Meanwhile the Conference Board (NICB) undertook a small job vacancy survey on its own account in Rochester under Ford Foundation funding. Forced by AFL-CIO opposition into low visibility in its own efforts, the Labor Department's Office of Manpower Research undertook support of the NICB activity. Further research, an international Conference and publications broadened support and allayed suspicion, leading directly to a regular Labor Department job vacancy survey.⁷⁶

There were also semi-research backgrounds to proposals not yet sanctioned by legislative approval. Growing out of 1963 hearings in both the Senate and House, a strong push developed for an

Employment Service reform bill.⁷⁷ Actually, nothing was proposed which could not have been achieved administratively under the permissive Wagner-Peyser Act, but some of the changes could be introduced with more power if they had a Congressional mandate. Employment Service budgets were bumping against the ceiling of their Unemployment Insurance payroll tax funding source. Wagner-Peyser allowed general treasury funding but that alternative had not been used for thirty years. New Congressional approval might make the Budget Bureau and Appropriations Committees more generous. The national organization of private fee charging agencies had initiated a strong lobbying effort to restrict the public employment service to serving the unemployed.⁷⁸ Wagner-Peyser authorized service to everyone but a reiteration of that policy would be a welcome defense. In addition, there was need to give general authorization for such services as relocation assistance, job creation and an improved labor market information system.

Internal Labor Department efforts to generate such a bill and get it before the Congress met opposition within the Department, the Administration, the Labor movement and elsewhere. A blue-ribbon task force to study the issues and hopefully come to similar conclusions might add impetus. A task force headed by George P. Shultz, then of the University of Chicago, and combining academic, business, and labor membership was the result. Its findings did turn out to be compatible, there was a bill but it died in Congressional battle as both friends and enemies sought to use it as a vehicle for peripheral vested interests in collective bargaining.⁷⁹ There were longer run gains, however. The Automation Commission meeting simultaneously suggested a computerized man-job matching system for the Employment Service.⁸⁰ The ES Task Force reacted negatively at first, but subsequently added its endorsement, the two recommendations giving a vigorous push to latent interests already existing within the system. The current multi-state pilot projects were results.⁸¹

The Task Force endorsement of the need for an improved labor market information system led to a subsequent task force on the same subject chaired by Arnold Weber, also from the University of Chicago, the Vice-Chairman of the earlier groups.⁸²

The need as explored by two task forces and introduced in the 1966 bill, contributed to Congressional interest leading to inclusion in the 1968 MDTA amendments.⁸³ This mandating of a topic of prime interest within the Labor Department was still necessary to get the developmental machinery moving, along with the necessary appropriations.

In a similar fashion, the two major elements of the comprehensive manpower bill passed by Congress, but vetoed by the President at the close of 1970 had origins and histories which included hearings and research. The administrative reform portion—the concepts of decategorization and decentralization of manpower programs—traced back to: (1) identification of local level administrative chaos by three-man interagency teams sent out to various cities under the sponsorship of the President's Committee on Manpower in 1966-67; (2) the extensive evaluations of manpower programs sponsored by the Ford Foundation and undertaken by Sar Levitan and Garth Mangum;⁸⁴ (3) a paper prepared by Mangum for the National Governor's Conference,⁸⁵ a position paper by the National Manpower Policy Task Force proposing administrative reform and internal Labor Department recognition of need.⁸⁶

The public service employment proposal history included: (1) recommendations by the Senate Subcommittee on Employment and Manpower,⁸⁷ based on no better research than the fact that the Subcommittee's research director who wrote the report had been raised on a WPA paycheck; (2) vigorous advocacy by Labor Department representatives on the task force assigned to design the Economic Opportunity Act;⁸⁸ (3) response of city officials to a letter sent out by the staff of Senator Gaylord Nelson asking for the number of jobs which could emerge if the federal government were to establish a program to pay for the labor (Operation Mainstream was the result); (4) the recommendation of the Automation Commission that the federal government become the "employer of last resort";⁸⁹ (5) the contrasting New Careers advocacy for permanent public sector career ladders for the poor;⁹⁰ and, (6) consistent writings defending these positions⁹¹ and persistent legislative proposals by members of the responsible Senate and House Committees.

Research had criticized existing administration but had not

supported the potential effectiveness of the administrative reforms proposed. All the various proposals had included a strong federal role ranging from a maximum position of unrestricted federal contract authority to a minimum position of federal guideline issuance, federal rejection or approval of state and local plans and federal monitoring and evaluation of state and local performance.⁹² The Nixon Administration's call for "special revenue sharing" implies a weaker federal role but is equally unsupported by research. It does have going against it substantial research on the weaknesses of the state and local manpower institutions and staffs to which delegation would be made. Similarly, research had demonstrated that the absence of suitable post-enrollment employment was the fatal deficiency in almost every manpower program.⁹³ Research had also shown "work experience" programs to be the least effective among existing manpower programs. That a public service employment program could be created which provided meaningful jobs in a period of rising unemployment was an article of faith, not a research product.

The only possible conclusion is that research played a significant but not a major role in the formation of manpower programs. It, in some cases, identified problems and criticized existing administrative organization. The earliest manpower programs preceded and, in fact, subsequently generated major manpower research efforts. The research input to policy was greater the later the emergence of the program and the less the Congressional involvement in the decision.

Research and Program Modification

Whereas the relationship between research and political decisions on manpower problems tended to be coincidental, the relationships in the evaluation, feedback and modification of existing programs could be more deliberate. Of particular note are experimental and demonstration efforts (E&D) and evaluative research.

As pointed out above, the Labor Department's experimental and demonstration effort, began as a strategy to divert funds from the initial state-run MDTA program for adult, nondisadvantaged workers to a clientele needing assistance and without other re-

sources. However, even though it was not until the mid-1960s that a research discipline was built into the E&D projects, there was considerable learning by experience in the earlier ones.

Early E&D projects made direct contributions to the original design of the Community Action program, Neighborhood Youth Corps, New Careers, NAB-JOBS and CEP. However, its greater contributions had been in the modification of existing program and the development of supporting institutions. Emphasizing ways of dealing with the problems and the institutions of the disadvantaged, E&D projects, both in the Department of Labor and OEO, have tended to draw heavily on psychology, sociology and other social scientists than the economists who have tended to dominate manpower research. Recently, after years of separation, the Labor Department has merged its research and its experimental units into an Office of Research and Development, hoping to make E&D more rigorous while giving manpower research more of an action orientation in the testing of innovations. OEO has always enjoyed a close alliance between E&D and research, whereas experimental and demonstration projects have been largely missing from HEW.

As examples of policy contributions from E&D efforts are involvement in the development of concepts and practices of outreach, experience in group counseling and use of nonprofessionals as aides, work sample testing, postplacement counseling (job coaching), one stop neighborhood multi-service centers, training, placement and support of prison inmates, the role of growth as tutors to youth, and private employer involvement.⁹⁴ It made substantial contributions to the development of pre-apprenticeship and some of the concepts of skills centers. A major effort has been the development of racially or ethnically concentrated private nonprofit self-help institutions. In addition to developing new institutions new techniques have been developed for integration into existing agencies such as the Employment Service. Rarely was an innovation thoroughly validated before it was grabbed and put into action. The hunger for working tools was too great to wait when any approach showed possibilities of success. But there was a mechanism for innovation and some semblance of testing.

Evaluative research evolved into a major activity after 1966 and influenced policy by suggesting modification of existing forms. Nowhere in public policy in the United States (or anywhere else) has the demand for evaluation been so intense, nor the response so thorough as in the antipoverty and manpower areas. Education had never been called to account for the billions in public investment. Evaluation in that field meant only a look at the inputs to see if conventional notions of "best practice" in pedagogy were being followed. The value of the output was never questioned. The present demand for accountability in education may be a reaction to overinvestment in schooling of the existing types. However, it (the demand for accountability in education) has been heavily affected by spillover from closely allied manpower program evaluations. No strong demand has yet been heard for objective evaluation of the cost-benefit or cost-effectiveness results of agricultural parity programs, national defense, highways, or space exploration, or various business subsidies. Reclamation projects and the vocational rehabilitation program have long used cost-benefit jargon to argue for continued and expanded funding, but not to question the worth of their activities.

It is doubtful that the Manpower Development and Training Act would have experienced serious questioning had it continued its initial emphasis on displaced workers of long labor force attachment. It was the "war on poverty" and the linking of MDTA with the Economic Opportunity Act in that controversial endeavor that started Congress, about 1966, demanding evidence that the programs were achieving their goals. However, even before that time a few studies had examined the conduct of programs, either to test their work or to seek suggestions for improvement.

The Area Redevelopment Act had undergone two types of evaluation, both funded by the Ford Foundation. Sar Levitan's appraisal of the overall program contributed to some degree to its demise and reformulation into the Economic Development Act.⁹⁵ The followup studies by Gerald Somers and his colleagues of the subsequent employment experience of those obtaining skill training under ARA were longer range, lower key and did not become involved in political controversy.⁹⁶ They were more influential

within the economics profession in developing techniques of cost-benefit analysis than in the political arena.⁹⁷

The first bit of research contributing directly to program modification was one of the earliest research projects funded under Title I of the new MDTA. Simply conceived, a study in Norfolk by Virginia State College, merely explored why so many workers obviously needing training either refrained from entering or failed to complete MDTA projects. The answers were simple but important in legislative revision—stipends were too low to enable enrollees to complete their training courses rather than drop out to take any short-term, dead-end job which came available to meet immediate financial needs. Wives had not been educated to the long run advantages of training and contributed to the dropout rate. Existing training techniques assumed reading and arithmetic skills many of the enrollees did not have.⁹⁸ Research and demonstration projects dug more deeply into the ranks of what later became known as the “disadvantaged” than regular MDTA courses were doing. Their experience produced a message similar to that of the research project and sparked a legislative response in the 1963 MDTA amendments.

The first case of program modification through research was also the clearest. The MDTA amendments of 1965 and 1966 were primarily the results of administrative experience rather than research results. However, there were significant exceptions. As reported above, the experimental and demonstration program had been undertaken by liberal interpretation of vague language in the original act. Imaginative use had been made of the training funds allocated to that purpose. At a time when the target of the program had been the adult worker of long labor force attachment, E&D projects concentrated on disadvantaged youth. Identification of those problems, along with labor force and employment data from the BLS and publicity from the National Committee on Children and Youth about “Social Dynamite,” contributed to expansion of the youth component of MDTA in 1963 and the Economic Opportunity Act in 1964.⁹⁹ In 1965, the E&D effort was rewarded for its effectiveness by writing it into Title I of the act with its own funding. Increasingly, it drew on analytical talents as well

as resourceful operating units until it was recognized as a basic ingredient of a broad research capability.

The prominence of relocation assistance among European manpower programs had been advertised by contributors to the McCarthy Committee and Clark Subcommittee hearings.¹⁰⁰ Following the failure of the Clark proposal for relocation assistance in the 1962 MDTA bill and continuing political resistance, the House Select subcommittee on Labor slipped the concept through among the 1963 MDTA amendments as a "pilot project to test its effectiveness" as a weapon against unemployment. Initial experience under the pilot projects was sufficient to gain extension and an enlargement of funding in 1965, but never sufficient to overcome the politician's aversion to relocating his constituents. A research project had also tested the effectiveness of skill training in prisons as a defense against recidivism.¹⁰¹ Research and E&D experience also identified the need to provide bonding for those whose police records were an impediment to employment. Both were proposed as additions to MDTA in 1965. Only the bonding was immediately successful, but after discussion in 1965 and 1966, a prison program finally emerged in 1968.

Research influenced EOA manpower programs in a more negative direction as evaluative research questioned their effectiveness rather than suggesting additions. Sar Levitan's studies of the EOA program of the factors contributed to the increasing disfavor of such initially popular programs as Neighborhood Youth Corps and Work Experience and Training.¹⁰² Work Experience and Training was eliminated to be replaced by WIN. Job Corps was cut back sharply and Neighborhood Youth Corps experienced both a funding squeeze and an extensive reorganization. Evaluations by the General Accounting Office (GAO) were influential in the Job Corps cutback and NYC remodeling. The involvement of GAO was itself significant. Congress had required by law that it go beyond its familiar auditing task to look at program content and results.¹⁰³ Evaluative research by a private contractor exposed the near scandals under the Special Impact Program and transformed it from a manpower program to one of economic development.¹⁰⁴ Mangum's studies of MDTA, on the other hand, contributed to its popularity and particularly to the priority placed on Skills Centers

by the Congress in 1968.¹⁰⁵ Hopefully, the choice of programs to evaluate rather than relative softness of heart or head explained the differential treatment.

A combination of internal research and the Levitan-Mangum evaluations under Ford Foundation auspices floated the issue of administrative coordination to the forefront. Levitan and Mangum in their *Making Sense of Federal Manpower Policy*, emphasized the competition among federal agencies and administrative chaos at the local level.¹⁰⁶ Under the direction of Thayne Robson as Executive Director of the President's Committee on Manpower, three-man teams representing the Departments of Labor and HEW and the Office of Economic Opportunity were sent to 15 major cities to study the interrelationships among the numerous programs. Their internal reports provided flesh and blood examples of the confusion more conceptually identified.¹⁰⁷ Those inputs were, in turn, contributors to the development of the Cooperative Area Manpower Planning System (CAMPS), an organization for joint planning by all agencies responsible for administering manpower programs in a state or major metropolitan area. The concept of the Concentrated Employment Program (CEP) was a related one. In addition to targeting resources in concentrated areas, it contemplated one stop delivery of manpower services.

Internal Labor Department evaluations questioned the meaningfulness of MDTA-OJT and were responsible for substantial changes in the administration of CEP. Given the limited staff time available, those internal staff evaluations soon gave away to contract evaluations by private firms, raising questions of both methodology and the knowledge, competence and objectivity of the evaluations. A few contract evaluations looked at individual CEPS, but the program has never been aided nor victimized by significant research. CAMPS, too, has continued its way without research and with little evaluation, though a local application is under careful assessment by university faculty and students in Boston in hopes of improving its planning capability. The NAB-JOBS program which, in its launching, had ignored the experience of E&D projects, suffered the criticisms of contract evaluators. WIN evaluations raised questions about the commitment and competence of the Employment Service. Initially, the evaluations were limited

to examinations of administrative efficiency without knowledge of the outcomes in the lives of the enrollee. The assumption from brief experience was that enrollee follow-up was expensive and, given the life styles of the people involved, could never promise a return high enough to justify the cost. But preliminary experience with private survey firms demonstrated that the best of them could deliver a statistically valid return. Initial evaluations looked at total programs but, with experience, later ones indulged in cross program comparisons, assessed the total impact on labor markets from the interrelationships of all programs and even began exploring the differential results of various services provided within programs.¹⁰⁸

Given the academic interest which cost-benefit techniques aroused, the methodology of evaluation merits comment. In no case has a cost-benefit study had a significant impact on program modification. Those evaluations with a policy impact have rested primarily on the judgments of respect researchers. Cost-benefit studies have been used in unwarranted ways in defense of programs and have backfired. Negative ratios have been explained away or ignored as of doubtful validity. Data have rarely been available for a convincing conclusion. The essential follow-up to determine the impact on employment and earnings has only recently begun and the results available, though positive, are few.¹⁰⁹ The jargon of cost-benefit analysis and its claimed quantitative conclusiveness have not appealed to policymakers for whom informed judgment is a more familiar criterion. Quantitative techniques may be least sensitive to political responses, or the fault may be a failure to distinguish time and circumstance when the stage of program development or differences in economic and social settings or the characteristics of enrollees are such critical factors. Cost-benefit and cost-effectiveness analysis may have its day in manpower policy, but not yet!

To recapitulate the program modification role, it was possible to be more directive in addressing research to assessment and improvement of ongoing programs. However, that is not a type of research that many are likely to undertake on their own. It was also a work more attractive to psychologists, socialists and others accustomed to interventionist research than to economists who had

the analytical tools but not the traditions. Such research is grubby business involving field work and sleuthing and little of the clear intellectual challenge of model building and computerized data manipulation. By and large, therefore, at least as much credit is due to the institution willing to sponsor the research and evaluation as to the individual doing the research. But while recruiting research might be difficult, so was attracting the attention of program administrators with a vested interest in ignoring unpleasant findings. The presence or absence at a point of time of former researchers or others with research orientations in key staff positions in the Congress or the Administration was often a vital factor in whether a research or evaluation result led to program modification. Gradually developing through the period were effective strategies by research administrators to get the attention of policymakers and demonstrate the relevance of research results.

A PERIOD OF REASSESSMENT

Any particular research project can be assigned to more than one category in the analysis. Evaluation can question the worthwhileness of a whole program or suggest improvements within it. However, evaluations are always the judgments of the evaluator, never completely supportable by hard evidence. In a political world, the judgments of an evaluator is only one factor to be considered along with the pressures of interest groups and the "point with pride" or "view with alarm" necessities of candidates. Evaluations have led to modifications of programs and cutbacks or expansion in funding but only in the case of ARA and Work Experience and Training did a manpower program disappear, and in those cases, their role was largely picked up by EDA and WIN.

Having contributed modestly to the launching of programs and substantially to their modification, a number of research projects have begun to question easy assumptions reached during the earlier and more hectic years of manpower programs. The central issue, though not clearly stated, has been whether unemployment and other evidences of labor market disadvantage is inherent in the shortcomings of the individual or the structure of the institutions. It had been assumed that unemployment was a consequence of one

of two factors: either there were not enough jobs to go around or the workers lacked the necessary skills, experience or other attributes. Training and work experience programs all assumed that the solution was to change the worker by adding to his skills and experience, or changing his attitudes. On the other hand, the bulk of the E&D effort addressed itself to changing the institutions rather than the worker, including job restructuring and improvements in Employment Service assistance to change internal manpower management practices.

Hugh Folk and Edward Kalachek challenged the accepted views about youth unemployment. Some blamed minimum wages for pricing youth out of the market.¹¹⁰ All assumed inexperience and lack of education and training to be important. Folk and Kalachek demonstrated that most of the differential between youth and adult unemployment could be explained simply by the swollen numbers of youth and the fact that longer school retention meant an extended period of labor market entry, exist and re-entry.¹¹¹ These factors did not explain the differentials in the unemployment rates of white and black youth.

Because an inverse correlation existed between educational attainment and unemployment rates, while the correlation between education and earnings was strongly positive, it was assumed that education was the causal factor involved.¹¹² More schooling was the cure-all. The spreading interest in the human capital concept reinforced this view.

Schultz, Solow, Kendrick and Denison isolated an unexplained residual in the relationship between economic inputs and the outputs of goods and services, some of them attributing the residual to technological change before fixing upon education as the major determinant.¹¹³ However, given the difficulty of identifying and proving a national rate of return from human resource investment, standard practice shifted to measurement of individual returns through higher earnings attributed to education. The lifetime earnings of those with more education were compared to the lifetime earnings of those with less education. The difference can then be expressed as an annual rate of return on the costs of the education.

This straightforward approach too had its difficulties. Like any

cost-benefit analysis, measurement of costs and benefits was not simple and choice of an appropriate discount rate could often predetermine the results. But these were only technical difficulties. The more serious ones were conceptual. Education was only partially approached as an investment by the purchaser (investor) of education. For the youth, it may have been the parent who pays and makes the judgment of usefulness and purpose. Education was a consumption good as well as an investment with people undertaking education for cultural and social as well as economic reasons. At the elementary and secondary level, attendance was a matter of compulsion rather than choice. Society had decided it had an interest in the education of its citizens in addition to the individual benefits. If left to their own discretion, and to pay for their own education, it was assumed that individual need would be met but there was insufficient education for social purposes. Measurements of return must differentiate between private and social benefits, but neglect neither. If education was left to individual investment, those who could afford it would have it while those who needed it the most to rise above their present circumstances could not afford it.

If aggregate incremental earnings were taken as a measure of the national return from investment in education, the problem of conspicuous production emerged. If the employer hired those with educational attainment greater than that required for the job, he might add to employee earnings without a commensurate increase in productivity. Insofar as there was a tendency for those with the greatest native ability and motivation to gain the most education, the education investment may be credited with what was really an economic rent on unusual ability. With all of those handicaps, however, careful scholars appraised the contributions of a wide variety of investments in human resources, including education and training, with results generally favorable to education, suggesting a rate of return above that normally expected from investments in other forms of capital.¹¹⁴ Consistently, the message was "more." But Berg criticized possible overly favorable biases based on the conspicuous production and native ability factors.¹¹⁵ Chamberlain, on the other hand, warned that education enthusiasts might be laying a trap for themselves in their

unrestrained endorsement of the human capital approach.¹¹⁶ What if after getting everyone committed to justifying education by "accounting techniques," diminishing returns set in for the incremental earnings approach? Will other social advantages be neglected because of overemphasis on economic values?

As part of the reassessment phase, the evidence was reexamined with a healthy spirit of scepticism. Rupert Evans accused educators of endorsing "school for schooling's sake."¹¹⁷ Elementary school prepared for high school which indiscriminantly attempted to prepare youth for college where they could be prepared for graduate school, the ultimate vocational education where the next step, finally, was the labor market. Any preparation for employment supplied by lower levels in the school system was an accident, or a condemnation for education "failure." Berg considered the overemphasis on education for jobs to be a "great training robbery."¹¹⁸ Little direct connection existed between education as presently practiced and the objective requirements of most jobs. Employers were deluded into "conspicuous production" by hiring overqualified workers, and paying the price. In repayment for the higher than necessary wages, they were buying overqualified, restless employees and high turnover. Yes, the educated did have higher earnings and less unemployment than the uneducated, but what was the cause? It was obvious, on the average, that those from the higher socio-economic status and with the tested capacity to absorb learning by existing methods were the most likely to continue in school. Wasn't it likely that they, on the average, would have found steadier employment with higher earnings without the added years of school? Edward Denison, the most quoted authority on the economic growth-generating consequences of education, added fuel to the reassessment.¹¹⁹ The colleges were enrolling the wrong people. Selection criteria were rejecting those who needed education to help them make their way in the world and recruiting those who could have "made it" in the economy and society without.

With programs emerging in a period of persistent unemployment, the concern was naturally the availability of jobs and the problems of the underemployed. The objective was a job—any job for the unemployed. Research by Piore and Doeringer in the Boston ghetto labor market, accompanied by the experience of the

NABS-JOBS program in tightening labor markets, was a reminder that the labor market had a supply side too, involving people who were perfectly capable of rejecting unattractive jobs which did not meet their expectations.¹²⁰ The NAB-JOBS experience even identified the reservation rate in each major labor market.¹²¹ BLS and census surveyors were responsible for the intelligence that as many people were poor from low wages as from unemployment with even more in poverty for lack of an employable wage earner in the family. But the greatest surprise was the fact three million including nearly two million heads of families worked full time-full year without exiting from poverty, with low wages and large families as explanations.¹²²

Basic assumptions about the boundaries between work and welfare were also challenged. Liberals and social workers, by and large, had viewed the welfare population as made up of families without breadwinners with no realistic alternative to dependency. The poor were the aged, female-headed families, and the long-term unemployed. The conservative image of the typical welfare was a burly, hairy-chested man in his undershirt sitting in an easy chair in front of the television with a can of beer. "Why can't he work for a living like I do?" The social worker vision was largely correct as long as most states denied public assistance to families with an employable but unemployed head. But as some states liberalized their rules under federal prodding, and families in others learned the profitability of desertion, the picture blurred. Researchers helped make conventional wisdom of the insight that welfare families faced a "100 percent income tax" on any discretionary earnings. Academics not only discovered that only a portion of those eligible for welfare had access to it but organized a campaign for "welfare rights," hoping as much as anything to bankrupt a system they considered demeaning.¹²³

The concept of the negative income tax was largely an academic contribution, with advocacy ranging across a remarkable spectrum.¹²⁴ Conservatives were unenthusiastic about welfare but, if it had to be, preferred giving money to having social workers make consumption decisions. Liberals sought to reduce opposition to guaranteed incomes by maintaining work incentives. As noted, discovery of the working poor, those who worked full time-full year

at wages too low to pull them out of poverty, was a contribution of government researchers,¹²⁵ but it took others to package and "sell" the implications of the finding. The Family Assistance Plan, whose primary beneficiaries would be these working poor was designed by academics turned politicians.¹²⁶ A point not yet clearly made is that welfare benefits have risen more rapidly than the lowest wages, overlapping the lower ranges of the wage structure. For increasing numbers, the choice between work and welfare is a real one, not because the latter's benefits are excessive, but because the former's are abysmal.

Transportation as an obstacle preventing access to jobs also became conventional wisdom by the late sixties, even though studies found that subsidized public transit made little difference.¹²⁷ Housing patterns received less attention from the manpower research fraternity.¹²⁸

The "Where Do We Go From Here" Phase

Reassessment led to uncertainties in policy. Training and jobs for the disadvantaged were clear priorities by 1966-68. The 1968 election campaign identified the blue collar worker (and his lower level white collar counterpart) as the troubled and forgotten American. Finding a new field to plow, the now enlarged cadre of manpower researchers swarmed over the new ground.¹²⁹ College trained scientists and engineers, whose unemployment rate rose to 3 percent, were as respectable targets of research and concern as those with persistent rates ten times as high.

On the other hand, younger researchers concluded that the system's rigidities rather than the minority workers' shortcomings were the explanation of the latter's plight, raising a new interest in evidences of racial discrimination in employment. Richard Nathan, who would be a pillar of the new Administration, was a leading critic of the anti-discrimination enforcement structure in the old.¹³⁰ The Equal Opportunity Commission kept the pot stirring, relying heavily on the revelations of younger researchers.¹³¹ At the same time, advocates of "benign neglect" were having a difficult time convincing minority groups and their supporters that their statistical conditions were improving.¹³²

All throughout the short history of manpower programs there

was uncertainty as to who needed what service. Displaced adult workers, unemployed youth, the disadvantaged undefined and the disadvantaged officially defined, each had their turn as target, but no one at any step knew how large the target group might be. Measures of the universe of need began emerging, just as the concept of concentrating on the disadvantaged was being questioned. While studies were discovering that the existing capacity of manpower programs was adequate for less than ten percent of the eligible disadvantaged,¹³³ others were criticizing that partial approach and calling for policies encompassing the entire labor force.¹³⁴ Those who by now could be considered old-fashioned feared relinquishing the focus on the disadvantaged lest the limited supply of social energy be dissipated over too many targets.

The same old-fashioned troupe at middle age, who harkened back nearly a decade, were beleaguered by young critics who challenged manpower programs to show any substantial results from the time and treasure expended. The typical answer was a defensive one—having tried to do too much with too little and having promised even more. If training had not led to jobs, perhaps the fault was having set the target too low. With eligibles many times the capacity of limited budgets, the choice had been a lean program for many or a rich program for few. Because the jobs trained for were too often those which could have been obtained without training; because the occupations designated as having “a reasonable expectation of employment” were characterized by high turnover rather than expanding demand; that was no proof that programs of longer duration could not lift the disadvantaged into the technical level jobs of expanding demand. Yet the generally negative defense rarely stressed that the limited follow-up results available typically found manpower program participants substantially better off than before enrollment but rarely out of poverty and never as well off as those committed to labor market reform had hoped.

Manpower policies and programs had emerged with limited underpinnings from research. Research had evaluated them and contributed to their modification. Experience had identified some of the manpower services of value to some people. Research had yet to determine which services were useful to what enrollees under what conditions. It had yet to identify the linkages between the

marginal jobs incapable of lifting a family out of poverty and the no more skilled but well paid ones in the labor market's mainstream. Later research had challenged some of the basic assumptions of manpower policy and programs, but it had yet to signal clearly which way to go from here.

The Manpower Research Cadre

Regardless of the magnitude of the impact of research on policy and programs, there was no doubt of the impact of policy and program on research. Labor market research had been the province of men attracted to the field by the reform potential of the labor movement during the last half of the 1930s. They gained prominence under the aegis of the War Labor Board and dabbled in manpower research while they worked at arbitration during the 1950s. The manpower research funds becoming available during the 1960s were small potatoes beside that available for research in the physical sciences and health. But in the social sciences, and particularly labor market research, it was a case of rapid multiplication. Since the dollar's function is the allocation of resources, talent and commitment went with the money.

But there was more to it than that. The funds available, particularly the MDTA Title I funds in the hands of the Labor Department Office of Manpower Research, were carefully husbanded. The research administrators sought to assure funding according to predetermined priority, yet leave flexibility for the unusually attractive proposal. But the available researchers were largely retreaded students of industrial relations. More important than the funding of research was the deliberate use of research funds to build individual and institutional capacity.

A series of institutional grants built capability in 7 institutions over four years, and then were transferred to support 12 more, all of which were encouraged to emphasize student support as the primary function of the grant.¹³⁵ By June 30, 1970, a total of 178 research contracts had been completed by a variety of universities and research firms and an additional 77 projects were still under contract. Besides the institutional grants and major projects, a program of small individual grants to support doctoral dissertations in the manpower field begun in 1968 had produced 77 completed

dissertations by June 30, 1970, with an additional 106 still in process. The research manpower committed to manpower research from these funds represents a tremendous investment in human capital with both immediate and long-term payoffs. Next to the attraction and development of manpower, the most important contribution of the research effort was the development of strategy to bring research results to policy attention.

Underdeveloped Areas of Manpower Policy Research

It is impossible to determine all the ways and the full extent to which research played a role in the manpower policy decisions of the 1960s. Research is of necessity a plodding process, depending upon the diverse interests of numerous individuals most of whom are of independent mind and circumstances who can be attracted by promotion and funding but cannot be ordered to undertake or produce from research. The initial growth phase of manpower policy and program is over, but the persistence of the problems and the vested interests of administrators and politicians guarantee its continuance. A more orderly period, more conducive to research contributions is likely. Many areas of empirical research remain underdeveloped and many policy issues require more thought.

The delivery system for manpower services will be a subject of continued concern and experiment. The appropriate roles of federal, state and local governments, manpower institutions and education institutions, the public and the private sector have never been clarified and decided. For instance, if the federal government has the funds and the perspective, the mayor has within his boundaries most of the target population who have employability and employment problems, but the jobs are outside the city limits, who directs, organizes and runs manpower programs? Who are the targets of manpower programs? The universe of need has been defined nationally, but rarely at the local level where the action must occur. Who should be served and what mix of manpower services do they need under what conditions? Conversely, what program or what services can do what for whom under what conditions? Many are issues to be resolved by political value judgments; but on several current research can shed light and an appropriate research design should eventually provide answers.

What is the relative balance of individual deficiencies and institutional rigidities and prejudices in creating labor market disadvantage? What are the factors which from a given and equal start lead some to success and others to failure in the labor market? And what comprises an equal start and what can eliminate or compensate for initial inequalities?

What are the most effective ways of preparing young people for a successful working career? What impact on later labor market success has the home and neighborhood? the school? What orientation can prepare a youth to prepare for employment? What are the determinants of labor market success? Can they be synthesized? How much of success is native ability and how much institutionalized support? To what degree is failure programmed into the individual and his surroundings by low expectations?

How can a community identify and plan for alleviation of its manpower problems? What is the role of manpower in economic growth and development? Can any community pull itself up by its manpower bootstraps and how? What are the trade-offs between serving the disadvantaged and developing and utilizing the entire work force?

The list of inadequately explored areas which could illuminate manpower policy issues is seemingly endless. But policy need not stand still for want of research. It can plow ahead, as it always has, to learn from experience. However, there are already significant research findings which suggest policy changes which have never been made. The massive Ohio State University five-year longitudinal study of labor market participants of various ages, sex and race is only beginning to be reviewed for its policy significance.

Continuing debate over poverty as an economic or a cultural phenomenon should already be resolved as far as manpower policy is concerned. Regardless of cultural differences, there has been adequate research to demonstrate that the poor, including the minority poor, share all the standard middle class yearnings and prefer work to dependency or crime, whenever reasonably decent jobs are available.¹³⁶

There is also sufficient evidence that the basic manpower obstacle is still the supply of jobs. Even during 1966-68 when labor

markets in general were tight, there were never enough jobs in rural depressed areas or central city ghettos within the occupational ranges attainable by the disadvantaged which (1) paid as well as welfare, and (2) offered sufficient promise of advancement to be attractive to the young.¹³⁷ Every manpower program faces everywhere the same problem: there are never enough available placements for the graduates. Several policy alternatives emerge. Either the disadvantaged must be prepared through education or longer periods of remedial training to compete for the growing numbers of white collar and technical jobs, or they must be able to live adjacent to well-paid semi-skilled operative jobs, or there must be acceptance that many potentially employable people must be provided an income outside of the labor market, or there must be a massive and permanent public service employment program. And if the latter, it must be such that the jobs are regular ones without stigma and including all of the customary fringe benefits, job security and other prerequisites.

Despite the growing rhetoric about putting welfarees to work, there is ample evidence both from research and the WIN experience that the number of able-bodied males involved is few. They can be employed with reasonable effort and opportunity, but the number would soon be exhausted.¹³⁸ The welfare problem is a problem of female-headed families. They, too, can be employed but, in addition to the child care and supportive service needs, jobs for low-skilled women paying more than welfare benefits are extremely scarce.¹³⁹ Major welfare reform proposals are really programs of wage supplements for the working poor. There is evidence of need for it. There is also evidence that, given sufficient effort and resources, the skills of the working poor can be upgraded sufficiently for them to work their way out of poverty.¹⁴⁰

Despite some beginnings on pre-release and post-release training for prisoners, the proportions who receive any preparation for non-prison life are minimal. Research and experimental evidence are adequate to support a wholesale expansion of such efforts.¹⁴¹ Similarly, U.S. and European experience with sheltered workshops have demonstrated a potential for noncompetitive work beyond that currently being exploited in this country.¹⁴² Far more persons handicapped by age or by physical or mental impairments and cur-

rently out of the labor force could be employed to the advantage of their psychological as well as economic status. Pilot programs of mobility assistance have had modest success, useful to only a small margin of the unemployed, yet highly important to those it was useful for. It should be added to the permanent kit of manpower tools, used in individual cases rather than on a program basis.¹⁴³

Politicians and some academics have been attracted to the notion that manpower policy should lift its sights to encompass the lower middle class worker. The political payoff is visible—there are more of them. The academic attraction is the conceptual symmetry of dealing with a whole rather than a part. Evidence of the “universe of need” among the disadvantaged compared to the resources the society has been willing to invest should be evidence that broadening the target would merely spread limited resources more thinly.¹⁴⁴ It is a value judgment, not a proven result of research, that the country’s “feet should be held to the fire” on the antipoverty front. Yet it is difficult for a political system to respond simultaneously with concern for the 25–35 percent unemployment rates of, for instance, black teenagers and the needs of the 3 percent customarily high income scientists and engineers who are unemployed. They signal their needs to very different politicians in very different ways.

As one begins a list of the unknowns in the manpower field—unknowns which are critical factors in manpower policy decisions—it becomes clear how little is really known after a decade of effort. The sixties were a period of experimentation in manpower policy. The surface was hardly scratched in manpower research. A cadre of manpower researchers has been developed and their appetites have been whetted by intriguing problems and available, though limited, funding. But researchers are fickle. They tend to go where the headlines and the money are. Hopefully, the interest in manpower policy research can be maintained in a period of stability, at least until a few of the major issues are resolved.

But research is only the first step. Research for research sake is a good way of life for researchers, but that hardly justifies the expenditure. The payoff for manpower policy research must be more effective policies. That requires identification and implementation of the insights gleaned from research.

Manpower policy research has earned outstanding marks in that process. Since most of the research which has occurred has been funded from one source, and that source has had a direct pipeline to policymakers, research results have not been ignored. The Labor Department Office of Education has, of course, undertaken its evaluations for only one purpose—to improve programs. The Office of Manpower Research and Development has had dual goals which lead to the same objective in the end: to affect policy later. Research products are plowed for insights of policy significance. Strategies are explored for “social engineering” approaches to implementation. Similar results can be identified in the research efforts of other agencies, but rarely with such coherence and consistency. Top Labor Department policymakers are increasingly briefed on significant findings. The research office does not “win ‘em all”, but more research results probably enter into policy proposals than in any other federal agency. That considerations of political strategy must enter at the White House, that the Congress must be sold, that there are shortages of resources and capable staffing, and that there is competition for attention to varied problems with consequent under-attention to some, are hurdles between any research and implementation.

While it cannot be concluded that research results have been a major factor in determining manpower policy to date, the flow of research results is rising, while the pace of manpower policy change is slowing. Both research volume and the machinery for implementation promise expanding correlation which can only mean more effective policy and more incentive for research.

Summary Statement

A logical policy process in a stable world would apply research to the identification of problems and the establishment of hypotheses followed by experiment for the development of programs. The final step would be evaluation to assess program results, followed by abolition or improvement. The real world is never that neat and clean. Some information existed at the beginning of the 1960s stemming from research and more emerged during the early years of the decade. But its major role was educational, with only modest contributions to the formulation of manpower programs

followed by a major role in program improvement. For the most part, manpower legislation emerged in response to the relatively unguided conceptions (or misconceptions) of policymakers. It was then tested by research, as well as by experience and followed by program modifications. New problems were identified, again by simultaneous research and experience and programs were adapted but rarely abolished. The interaction was complex but, primarily, policy led to programs which were then tested and modified by research.

Researchers, like Mr. Dooley's Supreme Court, read the newspapers and tend to take guidance from the headlines. However, the amazingly rapid switch which occurred from industrial relations research to manpower research in the early 1960s and the crowd of young researchers attracted to the field during the decade could only have been bought by an infusion of public funds and aggressive government recruitment. Interests do not normally shift that rapidly. The bulk of manpower policy research must be credited to the Office of Manpower Research and Development of the U.S. Department of Labor, with significant assists by the Office of Education, the Office of Economic Opportunity, and the Ford Foundation. Remarkably little has emerged from university funded research or from the unsubsidized curiosity of individual researchers.

Manpower research is unique in that it has exploded from an obscure field of interest in 1960 to a major area of academic and commercial effort in 1970. Interest was certain to grow with policy activity. But research takes more than interest; it requires funding. The researcher's talents, like all labor market skills, are allocated through the purchase of services and, in this case, the distribution of funds. That attraction of talent was a major contribution of MDTA. Relative to other federal sources of research funds, its appropriations have been small, but its impact has been greater than that generated by other research appropriations several times as large.

Research related to manpower policy issues is too voluminous for review in a single article. But most of that research has emanated from a source which has carefully listed and abstracted the research projects it has funded and disseminated.¹⁴⁵ This review

did not attempt a census or even a random sampling of manpower policy research. Rather, the selection criterion has been to identify those research undertakings which have had a direct and noticeable impact on manpower policy decisions. A primary purpose of this approach is to determine the interrelationship between research and policy. Does research identify problems and approaches to which policy is addressed? Or does research emerge after the fact of policy to test our political assumptions and evaluate program progress? Or does a more complex multidimensional and multidirectional relationship exist?

The answer to all these questions appears to be yes. But the most significant of all findings is the extent to which carefully planned strategies are necessary if research results are to be brought to the policymakers' attention in a form in which their implications are obvious and their implementation all planned. While designing their research methodologies, manpower researchers must, in their own defense, design strategy directed toward both policymakers and appropriators.

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Collective Bargaining Trends and Patterns

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At the start of the last decade, observers decried the failure of collective bargaining procedures to meet the problems generated by high unemployment levels. Ten years later, critics viewed with alarm collective bargaining settlements that made it more difficult for government to halt inflationary trends. Despite the periodic condemnations of collective bargaining, its use increased. It spread rapidly into the public sector at the federal, state and local levels, and made inroads into agriculture. Tactics tested in the bargaining arena by workers and management were adopted by student movements, tenants of rental units, and civil rights groups.

The innovative aspect of bargaining in the sixties was primarily its adoption as an appropriate method of decision-making in areas where it formerly was not significant. These are examined in this review essay, along with other aspects of collective bargaining not covered elsewhere in the two-volume IRRA compendium. In the 1970 volume Livernash discussed the wage and fringe benefit literature, and Ginsburg analyzed the factors influencing trade union growth. In this volume, Aaron discusses public policy and labor-management relations, and Crispo treats international developments in industrial relations. Here, we will cover automation; noncrisis bargaining; labor-management relations in the federal, state, and municipal sectors; bargaining by teachers; strikes and their prevention; some "noneconomic" aspects of the labor agreement (union security, management rights, subcontracting, worker participation in management, seniority, and interplant transfers); the grievance and arbitration procedure; bargaining in agriculture, higher education and civil rights; and bargaining theory, structure and process.

Automation

From 1954 to 1966 there was a large outpouring of literature, about automation in particular whether special steps should be

*Financial support from the Graduate School of the University of Wisconsin is gratefully acknowledged.

taken by collective bargaining or government action in order to ameliorate its adverse effects and to gain full advantage of its benefits. Various views about automation are reviewed below in chronological order. The first scientific popularizer of the automation revolution was Norbert Wiener. In 1949 he had written the book *Cybernetics* and in 1954 his revised *The Human Use of Human Beings* was published in paperback form.¹ Wiener argued that society was entering the second industrial revolution and that the great advances in automatic controls and technology generally could be used either for the benefit of humanity or to destroy it.²

Automation became an issue at the bargaining table when in 1955 the United Automobile Workers (UAW) emphasized its job-destroying aspects in support of the union demand for greater job security through a guaranteed annual wage.³ The auto industry and UAW agreed upon a system of supplementary unemployment compensation benefits (SUB) to protect workers against income loss in layoffs. Over the next decade several major industrial unions and large corporations developed and improved plans that provided protection against job loss because of technology and other causes. These, and the literature about them, are reviewed by Livernash in the 1970 IRRA volume.⁴

The 1958 recession and the 1960 slump stimulated further interest in automation and led President Kennedy's tripartite Advisory Committee on Labor-Management Relations to deal with the problems of technological change in its first report to the President.⁵ The report recommended that management and unions attempt to reduce job loss associated with technological change by advance planning, early retirement benefits, relocation, and retraining. It also recommended government support of similar measures and endorsed the concepts then being embodied in the pending initial Manpower Development and Training Act. And, despite demurrers from labor members, at that time it did not recommend a general reduction in the hours of work as an appropriate measure to increase employment.

In 1960, the Bureau of Labor Statistics (BLS) published a collection of 20 articles that had appeared in the *Monthly Labor Review* in the previous six years.⁶ The articles were grouped under three headings—general surveys of automation, effects of auto-

mation on industrial relations and specific bargaining situations, and case studies of productivity changes and technological developments. This publication provides a broad cross-section of views expressed about automation during that period.

More general discussions about automation and its impact on society, employment, unions, and collective bargaining were expressed in 1962 in "Automation," the special issue of the *Annals*,⁷ and in the American Assembly volume, *Automation and Technological Change*.⁸ A 1964 BLS report analyzed a dozen agreements which had language protecting workers against technological change;⁹ techniques cited included guarantees against income loss, SUB, separation pay, continuance of the former wage rate when downgraded, provisions for retraining and transfer, relocation expense allowances, and advance notice of plant closings or major changes.

In 1969, the AFL-CIO published a pamphlet, *Adjusting to Automation*, which contained a revised and updated collection of articles that had appeared in its monthly publication, *The Federationist*, during the preceding decade.¹⁰ These articles, written by Rudolph Oswald, were on the same topics as those noted above and summarize the thrust of bargaining efforts to meet the problems of technological and economic change.

The definitive work on automation, however, was the 1966 report of the National Commission on Technology, Automation and Economic Progress, *Technology and the American Economy*.¹¹ The Commission, established by Congress in 1964,¹² funded numerous studies available in the six appendix volumes to its report. Its chairman, Howard Bowen, and its staff director, Garth Mangum, jointly edited *Automation and Economic Progress*,¹³ a volume containing a summary of the report and excerpts from the studies included in the appendices.

The report concluded that "there has not been and there is no evidence that there will be in the decade ahead an acceleration in technological change more rapid than the growth of demand can offset, given adequate public policies."¹⁴ Although the report found that automation was not a major employment problem at the macro level, it emphasized that technological and economic change played a role at the micro level in determining who

was displaced. To ameliorate the plight of those who bore the direct brunt of technological change, the Commission recommended a wide and far-reaching set of programs, including one that provided that "government be an employer of last resort."¹⁵ In addition, through collective bargaining, unions and managements were encouraged to formulate financial carryover, relocation, and retraining programs, and to protect vacation, retirement, insurance, and other service-related benefits when workers were displaced.¹⁶

Two annotated bibliographies are helpful in locating information about the impact of automation on collective bargaining. BLS published a bibliography in 1962 and a supplement in 1963;¹⁷ Einar Hardin and several of his colleagues at Michigan State University published a similar bibliography in 1961 and a supplement in 1966.¹⁸ Each of these publications is indexed by author and topic and contains a short annotation summarizing the content of each item.

Noncrisis Bargaining and Study Committees

Although it would be erroneous to state that automation-connected problems were the sole reasons for the emergence of study committees and noncrisis bargaining techniques in the 1959-1962 period, it was clear that concern for job displacement and technological change stimulated their formation in the steel, meat-packing, and longshoring industries. These efforts are reviewed in *Creative Collective Bargaining*, edited by James Healy,¹⁹ and in *Automation Funds and Displaced Workers* by Thomas Kennedy.²⁰

The Human Relations Research Committee (later renamed the Human Relations Committee) was formed in 1960 by the United Steelworkers of America (USA) and representatives of the major steel companies as an outgrowth of the 1959 basic steel strike. It consisted of three top officers of the union and the chief negotiators for three of the major steel companies. Industry spokesmen rejected the addition of impartial committee members chosen from outside of the union or the company structure. The efforts of the Committee, under the working direction of R. Heath Larry of U.S. Steel and Marvin Miller of USA, enabled the parties to re-

solve their contractual differences on a noncrisis basis in 1962 and 1963. Complex problems, such as those involving the revision of seniority provisions, were settled by the use of surveys, hearings, and jointly written and recommended sub-committee reports.²¹

The committee approach in steel was a casualty of intraunion politics when I. W. Abel successfully challenged David McDonald for the presidency of the union in 1965. It was depicted as a mechanism by which important collective bargaining decisions were made by union technicians isolated from the rank and file and independent of the wishes of the elected union officials.²² Although Abel and other USA leaders have occasionally voiced support for innovations in bargaining, including the possibility of resolving impasses by arbitration, special bargaining arrangements had not been agreed to as the union and management of the steel industry prepared for the 1971 negotiations.

An automation fund and tripartite committee to administer it was established in the 1959 labor agreements between Armour and Company and the United Packinghouse Workers union (UPW) and Amalgamated Meat Cutters and Butcher Workmans union (AMC). As has been pointed out by the chairman of the Automation Fund Committee, Clark Kerr, the Committee was given "broad powers to study the problems of displacement resulting from the (Armour) modernization program, to promote transfers within the company by providing retraining and relocation allowances, and to consider other employment opportunities."²³

Probably the most innovative aspect of the Committee's activities was the substantial program it launched at each plant closing to help workers find new employment with other employers in the same community. An office was opened and staffed by a displaced employee, assisted and directed by members of the academic community hired by the Committee. Essentially, the Committee served as the ombudsman for the terminated employees—helping them obtain retraining, advising them about new employment opportunities locally, and championing their cause within government employment and training agencies.

The efforts of the Committee through 1965 are fully reported by George Shultz and Arnold Weber in *Strategies for the Displaced*

Worker.²⁴ Shultz, who joined the Committee in 1961 as Co-Chairman after the resignation of Robben Fleming, has not only provided us with an account of its activities but also supervised the readjustment programs undertaken at each of the major plant closings until 1969 when he became Secretary of Labor. The 1966 Shultz-Weber volume is supplemented by a summary article in the December 1969 *Monthly Labor Review* comparing the latest plant closing adjustment program in Omaha, Nebraska, in 1968 with the earlier efforts.²⁵

The adjustment program for displaced Armour workers has not been adopted by other major unions and managements. Instead, the government has expanded its efforts to assist unemployed workers and thereby has reduced the pressure on labor and management to establish their own programs. The contribution of the Automation Fund Committee is primarily the influence this experiment had in persuading the government to adopt similar techniques as a part of its positive manpower policy. It should be noted also that George Shultz and Clark Kerr assisted the parties informally in efforts to negotiate new collective bargaining agreements on a noncrisis basis, and despite a history of relative poor bargaining relationships in the early 1960's,²⁶ helped the union and management reach a pattern-setting agreement in 1967, six months prior to the expiration of the contract. In this respect, the use of experienced academic neutrals seems to have had beneficial results on the bargaining process.

The Kaiser Steel Company and United Steelworkers of America tripartite Human Relations Committee also featured the use of prominent neutrals to help resolve technical problems and to promote the renegotiation of the agreement in a noncrisis atmosphere. Since the 1959 steel strike, Kaiser and the USA have successfully avoided the traditional last-minute settlement developed under the imminent threat of a strike. The original neutrals, George Taylor, David Cole, and John Dunlop, were given a sweeping mandate by the parties which included their participation in contract negotiations as mediators, fact-finders, and possibly arbitrators if it became necessary.

The early phases of the Kaiser experiment are described as "A Case Study in Creative Bargaining" in the Healy volume.²⁷ There,

it is made clear that the element essential to the success of the program is the strong desire on the part of management and labor to make it work. The basic program features a progress-sharing and security plan. Progress-sharing involves a sharing by the company and workers of savings in labor cost attributable to more efficient use of labor. Security is provided for by guarantees against layoff or downgrading caused by the introduction of new technology.

Although the Kaiser plan has been modified periodically to make the payout more attractive to the workers, its basic conception has not changed, and company and union spokesmen have stated at IRRA meetings and elsewhere that this experiment is working well.²⁸ It has not been widely emulated, however, for two reasons. The Kaiser industrial relations philosophy gives to the union a larger role than most other large companies are willing to grant. Also, the economics of a West Coast basic steel plant are sufficiently atypical that its potential usefulness throughout industry is not demonstrated by its success in that particular situation.

The other highly publicized example of innovative bargaining in the past decade is the "M & M" (Mechanization and Modernization) Agreement between the Pacific Maritime Association (PMA) and the International Longshoremen's Union (ILWU). After several decades of bitter conflict, the management and union under the leadership of Paul St. Sure and Harry Bridges negotiated and renegotiated agreements extending from 1959-1971 that provided for labor peace, employment security, and increased productivity. Employers were given a freer hand to modernize in return for guarantees of work or income for the permanent employees.

Men and Machines,²⁹ a photo story published by the ILWU and PMA, describes longshoring work, the problems that faced the union and management, their conversion to a philosophy of cooperation instead of conflict, and the plan which they adopted. Max D. Kossoris, director of the West Coast Region of the BLS, described and appraised the 1961 and 1965 agreements in articles in the *Monthly Labor Review*.³⁰ Additional information about the ILWU-PMA agreements is contained in the BLS Wage

Chronology for the Pacific Longshore Industry,³¹ the Healy volume,³² the Kennedy volume,³³ and articles in various IRRA proceedings.³⁴

The objectives of the original "M & M" agreements and subsequent modifications have been achieved. Management and union representatives speak with pride about the increased productivity and security and income of employees. One problem raising some uncertainty about the future of the plan is the dissatisfaction with it expressed by younger workers who have not shared equally with the older workers in its benefits and who have voted against contract ratification in increasing numbers.³⁵ This can be overcome, however, if, in its 1971 negotiations, the union and management agree upon a distribution of economic improvements that is more attractive to the younger workers.

Although noncrisis bargaining had not gained more than minimal acceptance by the end of the 1960s, yearning for it was expressed widely. A. H. Raskin summed up a session on preventive mediation and continuing dialogue with the comment, "Unionism would be contributing to its own survival as well as social order by moving toward continuous dialogue as a substitute for crunch," which he defined as the "philosophy under which muscle, rather than reason or science, becomes the determinant of what is fair in labor-management relations."³⁶ Support for this same view, at least insofar as bargaining in the construction industry was concerned, was expressed by President Nixon in 1970 and 1971,³⁷ but at this writing, early in 1971, pressure bargaining under threat of a strike was still accepted as the normal procedure in private industry by leaders of labor, management, and government.

Federal Employee Bargaining

The constancy of behavior in private sector bargaining did not extend to the public sector where a fundamental shift in views and conduct took place. Prior to the passage of Executive Order 10988 in January 1962,³⁸ personnel decisions in the federal sector had been based on the rule-making procedures of the Civil Service Commission, and wages and fringes had been determined by congressional action. Subsequently, although Congress still controlled wages and fringes, changes in working conditions and codification

of existing local practices became proper subjects for determination by collective bargaining.

A comparison of the original Executive Order and its successor, Executive Order 11491, issued on October 29, 1969, shows how the industrial relations philosophy in the federal sector is developing. A handy government pamphlet makes such a comparison and also contains the current Executive Order and other related documents.³⁹ The original order followed the "Commission" (Civil Service Commission) approach, while the 1969 order relied more heavily on the "labor" (labor-management relations) approach. Explanations of the differences in the two philosophies and the propriety of identifying them in this fashion are contained in articles by Wilson Hart and John Macy.⁴⁰

Despite the fact that the scope of bargaining in the federal sector (except for the post office) continues to be quite limited in comparison with the private sector, employees have expressed an overwhelming preference for collective bargaining procedures. In November 1970, the Civil Service Commission reported that 1,542,111 workers, 58 percent of the civilian employees of the executive branch of the federal government, were represented by unions holding exclusive recognition rights with federal agencies.⁴¹ Exclusive recognition covered 87 percent of postal employees, 81 percent of wage system (blue-collar) employees, and 35 percent of General Schedule or equivalent (white-collar) employees. More than 3,000 exclusive bargaining units had been created, and, in half of them, unions and managements had negotiated labor agreements.

The gap between bargaining unit coverage and negotiated agreements reflects the rapid and recent increase in the adoption of bargaining procedures by federal workers outside of the traditional areas of union strength (the post office and shipyards). For example, as of November 1970, the largest union representing federal employees, the American Federation of Government Employees AFL-CIO (AFGE) had won bargaining rights for 530,550 workers (314,657 of whom were white-collar workers) but had negotiated agreements covering only 65 percent, or 342,233, of these employees. As the unions and managements build up their negotiating staffs, and as organizing opportunities decline, it is

anticipated that this lag between recognition and negotiation will disappear.

It is somewhat ironic that the politically potent postal employee unions, which led the fight for the passage of the original and subsequent Executive Orders, are no longer covered by them. As a result of a successful wildcat strike in March 1970, postal employee unions obtained the passage of legislation that provided for a separate labor relations system.⁴² The scope of bargaining was increased to cover wages, and the National Labor Relations Board (NLRB) was given jurisdiction over such matters as bargaining unit and unfair labor practice determinations. Except that union security clauses were prohibited and that compulsory arbitration was substituted for the strike as the means of resolving impasses over the terms of a new agreement, the newly independent postal service was given much the same labor relations system as the one prevailing in the private sector. AFGE and other unions representing federal employees outside of the post office are watching bargaining developments there and are expected to lobby for similar legislation in the coming years.

Literature about bargaining in the federal sector falls into three parts chronologically—the pre-Executive Order literature that predates the period covered by the essay,⁴³ the books and articles about the development of bargaining during the Executive Order 10988 era, and the more recent publications about what has happened since the passage of Executive Order 11491 and the postal reorganization act.⁴⁴

Wilson R. Hart's *Collective Bargaining in the Federal Service*⁴⁵ reviews federal labor management relations in the early 1960s. It is updated by his two articles in the *Industrial and Labor Relations Review* (ILRR), one giving his initial appraisal, written after a little less than two years' experience under the order,⁴⁶ and the other written two years later.⁴⁷ He summarizes the problems that existed at that time and predicted how they could be resolved by amending the original Executive Order. The encyclopedic work on bargaining in the public sector, emphasizing developments in the federal government, is *Labor-Management Relations in the Public Service* by the late Harold S. Roberts.⁴⁸ There, one can find the texts of pertinent Executive Orders, unit

determinations, advisory arbitration awards, and collective bargaining agreements. These are integrated by Roberts' short introductions to each topic and are supplemented by a lengthy collection of articles and reports about bargaining in the public sector.

Federal management's perception of the impact of bargaining on a sovereign employer, and in particular on management practices fashioned originally to fit into a Civil Service Commission approach are reviewed by William Vosloo.⁴⁹ A summary of the TVA bargaining experiment can be found in the *ILRR* article by Aubrey Wagner.⁵⁰ Two BLS pamphlets examine the extent of collective bargaining agreements in the federal sector in 1964 and 1967.⁵¹ A detailed analysis is made of the grievance and arbitration procedures in these agreements.

The best source of material about recent bargaining developments in the federal sector is the *GERR Reference File*.⁵² It contains a separate section on the post office and another about the Executive Order 11491 jurisdiction. It also includes CSC and BLS statistics regarding such items as contract coverage and strikes, rulings of the Assistant Secretary of Labor about unit determinations and unfair labor practice charges, and a sample of federal sector labor agreements.

Collective Bargaining in Public Employment by Michael H. Moskow, J. Joseph Loewenberg, and Edward Clifford Koziara,⁵³ is the first of what well may be a large collection of textbooks on this subject. Prior texts tended to start from a civil service orientation.⁵⁴ The Moskow-Loewenberg-Koziara volume has a 60-page review of labor-management relations in the federal sector.⁵⁵ The increasing number of collections of articles in books of readings about federal and other public sector bargaining are reviewed in the following section about industrial relations at the state and municipal level.

Bargaining in States and Municipalities

From early 1959, when there were no statutes authorizing collective bargaining by municipal or state employees, until the end of 1970, 23 states passed comprehensive legislation on this subject.⁵⁶ The first statute, passed by the Wisconsin legislature in 1959, gave employees the right to be represented by labor organizations in

conferences and negotiations with their municipal employers on questions of wages, hours, and conditions of employment, but did not specify a procedure for enforcing this right, nor did it authorize or create an agency to administer the act.⁵⁷ The latest law, on the other hand, the Hawaiian statute that became effective in July 1970, was a detailed statute including such innovations as the right to strike under specified conditions and the compulsory payment of a service fee by all employees in the bargaining unit upon request of the bargaining agent.⁵⁸

The statutes passed earlier in the decade, such as the original Wisconsin law, tended in subsequent years to be amended, strengthened, and applied to additional personnel. A thorough review of the status of bargaining by municipal and state employees on a state-by-state basis as of early 1970 is contained in the volume by Harold Roberts cited previously.⁵⁹ This is updated by the *GERR Reference File*, which includes statutes from 34 states as of the end of 1970.⁶⁰ Joseph Goldberg's short summary review of the policies and legislation adopted by the states provides a convenient and concise picture of the situation.⁶¹

Insights into the particular approaches adopted in the different state statutes can be found in the reports of the various blue-ribbon panels and commissions that led to the passage of state legislation. The recommendations of the New York, Connecticut, New Jersey, Illinois, Michigan, Pennsylvania, and Maryland panels are included in the Roberts volume.⁶² Some panels advocated separate administrative agencies for the public sector, some outlawed the strike and recommended penalties for the unions that struck, and some endorsed a limited right to strike. Russell A. Smith analyzed the similarities and differences in the recommendations of most of these panels and several others.⁶³ In the absence of federal law on this topic, states have fashioned their own legislation and have adopted a wide variety of approaches.

At this point, before reviewing the critical issues in public sector bargaining, it may be useful to note several basic sources of information about the status of bargaining by municipal and state employees. In addition to the material cited above, attention should be directed to the 1967 report of the National Governor's Conference and the three annual supplements published subse-

quently.⁶⁴ The original report surveys the practices that were current in 1966 and the annual supplements summarize the changes made in the following years. The "Issues and Implications" section of the 1967 report and Part IV of the 1970 supplement, "Pending and Emerging Issues and Implications," set forth the major problems in public employee bargaining and possible methods of resolving them. The above mentioned portion of the 1970 Supplement, prepared by a five-man advisory committee,⁶⁵ provides an excellent analysis of the public policy questions with which legislators are currently struggling.

Another source is the report of the Advisory Commission on Intergovernmental Relations (ACIR), *Labor-Management Policies for State and Local Government*.⁶⁶ It contains chapters about the evolution of public employee unions, the current status of labor-management relations (as of 1969), major problems, the recommendations of the Commission, and tables and appendices replete with strike statistics, glossary of terms, state statutes, and statements of individuals and organizations presented at hearings of the Commission.

The ACIR report favored a "meet and confer" statute rather than one that required the public employer to negotiate collectively with employee representatives. The recommendation drew dissents, however, from the Director of the Federal Budget Bureau, the Governor of New York State, and others. They preferred collective negotiations and stated that the "meet and confer" approach was only a transitional step that might be satisfactory for a short time in states that were not yet prepared to accept collective bargaining by public employees.⁶⁷ A year later, the Twentieth Century Fund Task Force on Labor Disputes in Public Employment supported the duty to bargain concept in the public sector.⁶⁸ The report, *Pickets at City Hall*, sets out policy recommendations for regulating public sector bargaining.

Three other collections of articles should be noted. The first is the trio in the July 1970 *Monthly Labor Review* by Joseph P. Goldberg, H. P. Cohany and L. M. Dewey, and E. Wight Bakke discussing legislation and bargaining policies, the expansion of union membership among public employees, and predictions of the future of bargaining in the public sector.⁶⁹ The BLS esti-

mates that, in 1968, less than 10 percent of state and local government employees belong to unions, although the proportion would be higher if the BLS included members of professional associations. More recent reports suggest that this relatively low penetration figure, compared to the federal sector, may change in the coming decade. The American Federation of State, County, and Municipal Employees (AFSCME), the leading union in this field, announced at its 1970 convention that it had doubled its membership in the prior six years and had grown from the nineteenth largest AFL-CIO affiliate in 1964 to the eighth largest in 1970.⁷⁰

The two remaining collections of papers are those presented at the 1966 and 1970 Spring Meetings of the IRRA. The 1966 meeting was devoted entirely to bargaining in the public sector and examined the problems at the federal, state, and municipal levels, compared the American and Canadian experience, and included a separate session about unionization of teachers.⁷¹ At the 1970 meeting, one session was devoted to the perplexing question of extending the right to strike to public sector employees.⁷² Papers were presented by John F. Burton, Jr., and Edward B. Krinsky outlining the arguments for and against the right to strike. Arthur M. Kruger analyzed the Canadian experience, and Donald J. White and Melvin K. Bers led the discussion and comments on these papers.

Turning now to the critical issues in public sector bargaining, we find that attitudes toward impasse resolution can be divided into three categories. The first and most prevalent is that unions may take impasses about the terms of a new agreement to mediation and fact-finding, but that if these techniques do not succeed, even when augmented by show-cause hearings and/or referral to the state legislature, the employer's position should prevail.⁷³ The second is that the dispute should be resolved through final and binding arbitration procedures that give to one or more neutral individuals the authority to impose the terms of settlement on the parties. The third category is to permit strikes, with restrictions that require unions first to follow procedures designed to head off the strike and that make provisions for protecting the health and safety of the community.

A defense of the solutions falling into the first category is provided by George Taylor, the chairman of the Governor's committee that provided the rationale for the present New York State law.⁷⁴ Taylor suggests that, as a condition of certification as the bargaining agent, the union must affirm that it does not assert the right to strike against the government. He believes that as a further deterrent to public employee strikes, various penalties should be invocable, although not automatically applied. Penalties against the union include fines, loss of the dues checkoff, and even cancellation of representation rights. Individuals could be punished by fines, demotions, suspension, or dismissal if the facts warranted such action.⁷⁵ As Taylor acknowledges, there is not a meeting of the minds about the wisdom of the approach he favors. He believes, however, that emphasis should be placed on the development of procedures for resolving disputes and that this effort should be accompanied by strike prohibitions and penalties in order to deter unions from striking.

George Hildebrand also supported the view that strikes should be prohibited and that fact-finding with recommendations should be regarded as the basic tool for resolving impasses about the terms of new agreements.⁷⁶ In his essay, he focusses upon the differences between private and public sector bargaining and the consequent need for different techniques and rules in the public sector. Jack Stieber, in an article written as a background paper for an American Assembly session, outlined the arguments for and against legalizing public sector strikes.⁷⁷ It should be noted that these three articles were published in 1967, prior to the authorization of strikes by any state and prior to the substantial increase in strike activity in the public sector.

Jean McKelvey reviewed the use of fact-finding in public employment at the end of 1968 and questions whether its early promise will be fulfilled.⁷⁸ She notes first that fact-finding with recommendations, which had not found favor in the private sector, has been accepted more widely and proved more useful in the public sector than was anticipated by some sophisticated observers. Her worry about the future of fact-finding apparently rests on the suspicion that, because it is nonbinding and therefore not final, it will become an automatic perfunctory prestrike formality as

under the Railway Labor Act.⁷⁹ Her article contains an assessment of the fact-finding experience of various states and a summary of individual state studies.

COMPULSORY ARBITRATION

As collective bargaining by public employees gains greater acceptance, there seems to be a tendency to shift from the advisory impasse procedures in the first category to both the compulsory arbitration and right to strike categories. Looking first at compulsory arbitration, we find that it has gained influential adherents and a firm foothold in legislation. President Nixon's endorsement of a form of compulsory arbitration as one of the solutions to national emergency disputes has made compulsory arbitration less of an anathema in the public sector. George Meany, President of the AFL-CIO, has supported its use in resolving public sector impasses.

A summary of the legislative status of compulsory arbitration and an analysis of the arguments against its use can be found in an article by Arvid Anderson.⁸⁰ He concludes that compulsory arbitration is gaining acceptance and cites the jurisdictions where this is occurring. Rhode Island, Pennsylvania, and Michigan have enacted compulsory arbitration statutes covering policemen and firemen; the Maine and Wyoming statutes apply only to firemen. Another Maine statute calls for compulsory arbitration of disputes about nonfiscal matters and applies to all municipal employees. Nebraska's Court of Industrial Relations may make binding awards in disputes affecting all municipal employees.⁸¹

Anderson examines various traditional arguments against compulsory arbitration. On the question of legality, he finds that courts are upholding statutes delegating this authority to arbitrators. Statutes include criteria for determining wage increases which are general enough to make it unlikely that judicial review will overturn an award. Awards involving subdivisions of the state have been found to be enforceable, but Anderson notes that the enforceability of an award requiring passage of fiscal legislation by a state legislature is by no means certain. Because there has been only limited use of arbitration to date, its effectiveness is not certain.

Some light is shed on the effectiveness of the compulsory arbitration process, however, by J. Joseph Loewenberg's study of the initial experience of firemen and policemen under the 1968 Pennsylvania statute.⁸² If effectiveness is measured by acceptance of awards by employees, the process was successful in its first six months as no strikes, slowdowns, or similar job action took place. Two-thirds of the approximately 200 Pennsylvania municipalities studied concluded bargaining through negotiations while the others turned to compulsory arbitration to resolve their impasses. The author notes that it is premature to assess whether the availability of compulsory arbitration has a debilitating influence on collective bargaining and apparently does not believe that the proportion of cases going to arbitration initially is necessarily indicative of a long-run trend. Bargaining had not spread to many small municipalities by 1968 so that the effect of the legislation in some instances was to cause negotiations to take place for the first time.

PUBLIC EMPLOYEE STRIKES

The traditional opposition to legalizing strikes by public employees is diminishing, and, perhaps it is the decline in de facto opposition if not in de jure opposition to some public employee strikes that is stimulating the interest in compulsory arbitration. Prior to 1969 no state sanctioned strikes by public employees. In the following two years, however, Montana passed legislation permitting strikes by nurses, Vermont authorized strikes by teachers, and Hawaii and Pennsylvania gave most public employees a limited right to strike. These developments reflect the increasing use of the strike, trade union pressure, early favorable reports about the Canadian experience, and the growing support of professionals and academic observers for some relaxation in the rigid ban against strikes.

A BLS study of work stoppages by public employees for 1958-1968 showed that they increased from 15 in 1958 to 254 in 1968;⁸³ an updating of the study to cover 1969 showed that number increased in one year to 411.⁸⁴ In a summary of the study published in the December 1969 *Monthly Labor Review*,⁸⁵ Sheila White shows that the group with the greatest amount of strike activity is teachers, followed by sanitation, hospital, and health service

workers. In terms of geographic area, strikes are most numerous in the Northeast. As in the private sector, union strength and strike activity are related, and in both sectors strike activity is less in the South than in other parts of the country.

Robben Fleming claims that disrespect for the law arising from the violation of blanket prohibition of strikes is worse than any undermining of sovereignty that flows from legalizing some types of strikes.⁸⁶ John Burton argues that strikes are preferable to alternative union techniques which in his opinion are even more unattractive to contemplate than strikes.⁸⁷ Edward Krinsky would favor experiments permitting strikes in some jurisdictions so that comparisons could be made with jurisdictions relying on other procedures.⁸⁸ Theodore Kheel argues that it would be a great mistake to adopt compulsory arbitration as the usual method prescribed in advance and that we should "turn instead to true collective bargaining, even though this must include the possibility of a strike."⁸⁹

Jack Stieber suggests that public services should be classified into three categories.⁹⁰ Disputes in services in the first category (cannot be given up for even the shortest period of time)—police, fire protection, and prisons—should be subject to arbitration. Those in the second category (can be interrupted for a limited period)—hospitals, public utilities, sanitation, and schools—should not be prohibited from striking but should be subject to injunctive relief when the health and safety or welfare of the community is threatened. And those in the third category (all services not classified in the first two categories), should be given the same right to strike as workers in private industry. The Canadian experience, described by Arthur Kruger, is cited by some American observers as a model that might well be emulated.

Canadian federal law provides that a union, prior to entering negotiations, may pick one of two routes. One ends in compulsory arbitration; the other in the right to strike. At the time it chooses, the union is aware of how many of its members are classified as essential employees who must remain on the job during any strike. At the end of 1969, 98 bargaining units involving 158,900 employees had opted for arbitration while only twelve bargaining units covering 37,700 employees had chosen the strike route. In

those cases where the union had chosen the strike route, employers had designated an average of about 14 percent of the employees as essential, an arrangement which apparently was satisfactory as it had not been challenged by unions under procedures established to handle such problems.⁹¹

Neither the Canadians nor the Americans have had sufficient experience with the right to strike in the public sector to permit analysts to reach agreement about the effect of this arrangement. Kruger points out that in Canada there have been two relatively lengthy postal strikes. The first occurred before the law was passed permitting strikes and was illegal; the second, however, was legal. He states that in both instances there was considerable inconvenience but that ultimately a settlement was reached and "society somehow managed to survive."⁹² This conclusion might well be construed as damning with faint praise and seems equally applicable to the other two alternative methods of dispute settlement discussed earlier.

Whether strikes are prohibited or legalized, it appears that employees will on occasion engage in strikes. Harry H. Wellington and Ralph K. Winter, Jr., explore the ramifications of both the legal and the illegal strike model,⁹³ and conclude, much like Kruger, that municipalities can survive strikes. In addition, they go on to suggest three ways in which municipal employers can reduce their vulnerability to strikes if such strikes are permitted: (1) contingency planning, (2) partial operation, and (3) changing the political process "to decrease public willingness to call for settlements without much regard to the costs involved."⁹⁴ Although the idea of accommodating strikes within the framework of public employee bargaining is still a minority viewpoint, it is worth noting how far we have come in this regard in recent years.

OTHER CRITICAL ISSUES

The ACIR report and the 1970 Supplement to the Governors' Task Force Report list and examine additional critical issues.⁹⁵ There is the question of whether the private sector administrative agency should be given jurisdiction over the public sector or whether a new and separate agency should be created to handle public sector bargaining problems. Separate agencies are favored

by those who wish to distinguish between the private and public sectors or who do not believe that the labor approach, and possibly the professional qualifications of the private sector labor board administrators, are appropriate for transfer to the public sector. Related to this issue is whether all public employees should be covered by one law or whether there should be separate statutes with different provisions for teachers, firemen and policemen, and state employees.

Another question that is easy to phrase but difficult to answer is "Who is public management?" The jurisdictional lines between the executive and legislative branches were not established with an eye to bargaining. In one structural situation the union bargains with the agent of the legislative branch, and in another it bargains with the agent of the chief executive officer. At the municipal level, the finance committee of the council may serve as public management while at the state level, the department of personnel or administration may do so on behalf of the executive arm. There is also the problem of distributing bargaining authority among semi-autonomous state agencies. For example, is the Board of Regents of a state university the management for bargaining purposes, or is such authority reserved to a central authority reporting directly to the governor?

Another difficult question that is related to "who is management?" is "who should choose the neutral?" In the private sector the neutrals who protect the integrity of the procedure are typically government appointees to labor boards or commissions. In disputes between public employee unions and government management, some unions have shown an understandable reluctance to regard appointees of public management as "neutrals." One way to meet this objection is being tried in New York City where the neutrals are chosen by the unanimous vote of the union and management representatives and are paid jointly by them.

In the private sector the Labor Management Relations Act (LMRA) defines supervisor and does not extend bargaining rights to this category. In the public sector, however, the situation varies. Some jurisdictions follow the private sector pattern; some permit supervisors to form separate bargaining units. In others, supervisory police and fire officials are included in the same unit with

the employees they supervise. The present consensus seems to favor a "flexible position . . . until more evidence is gathered. . . ." ⁹⁶

Bargaining unit determination questions in addition to those involving supervisors are also troublesome. Should police and firemen bargain jointly or separately? Should bargaining for municipal sanitation, courthouse, and health service employees be separate or joint, and into how many different units should employees of the state be divided? Should the local school board bargain wages with its teachers' association, or should there be regional or state-wide council-type bargaining? Private sector experience, although helpful, does not provide specific guidelines for easy application to the public sector.

A survey by Hervey Juris and Kay Hutchison showed that one-third of the cities with populations in excess of 50,000 bargain with their police organizations and that another 20 percent consult with these organizations on wages, hours, and related matters. ⁹⁷ Juris and Hutchison conclude that, since police unionism is well established in a functional sense, it would be wise to institutionalize this arrangement rather than to oppose it.

Scope of bargaining in the private sector may not be clearly defined and unchanging, but it seems so in comparison with the situation in the public sector. The desire of legislators to gain credit politically for compensation increases tends to prevent bargaining over wages and fringes. In addition, civil service regulations and agency rules tend to limit the scope of bargaining in the public sector. The concept of the mission of the agency and the duty of the executive branch to carry it out also tend to limit the scope of bargaining.

Public sector unions are seeking the removal of the restrictions on wage and fringe bargaining. Also, insofar as the mission of the agency is concerned, or management rights if one wishes to use the private sector analogy, employees in the public sector, particularly professional employees such as social workers and teachers, are attempting to enlarge the scope of bargaining. They see the bargaining procedure as a means of self-expression and as a vehicle for more effective reform of the agency than they could achieve formerly through political activities in their roles as citizens. Wellington and Winter examine this problem and suggest that

consideration be given to some form of tripartite bargaining in which there is direct representation of the consuming public.⁹⁸ This could be done by the establishment of commissions of disinterested citizens, or in education, of a commission of parents with children in school. Without third-party representation, they believe that public employee unions may exercise an undue influence on the allocation of public funds and the levels of service to be provided by different public agencies.

A dual approach to the scope of bargaining question is contained in the Maine statute governing public education.⁹⁹ It limits the duty to bargain to the conventional subjects but specifically extends to such matters as educational policies the requirement that the parties meet and consult. This division is one that Thomas Love found appropriate in his study of decision-making and bargaining by school boards and teachers on curriculum and other educational policy problems.¹⁰⁰

The union security issue is also a contentious one. Congress, which has approved union shops in the private sector unless prohibited by state action, has banned the union shop or any other form of union security for postal employees. Presidential executive orders also prohibit clauses requiring union membership in federal employee labor agreements. Most states and municipalities have followed the federal example on the union security question, but there are some recent exceptions. Michigan law apparently permits the agency shop and the Massachusetts legislature has authorized Boston to deduct service fees for representation from union and nonunion employees alike.¹⁰¹ The Hawaii statute provides that upon request of the certified bargaining agent, the employer must deduct a service fee from the pay of all employees in the unit and transmit it to the union.¹⁰²

In the coming years, it is likely that individual states and municipalities will adopt different solutions to the critical issues noted above unless federal legislation is passed regulating municipal and state employee labor management relations. Such legislation was introduced into Congress in 1970, but it had not generated sufficient support to make its early passage probable. Also, it should be noted that such legislation would set minimum stan-

dards and would not affect those states that have more comprehensive legislation than required by the minimum federal standards.

Bargaining by Teachers

Although teachers are local government employees and are covered in the prior section, their unionization and adoption of bargaining has been thought to be sufficiently important to generate a separate literature in addition to the general material about public employees in which they are discussed. For that reason, it is given additional attention here.

Most writers date the start of teacher bargaining from December 1961 when the New York City school teachers voted to be represented by an American Federation of Teachers (AFT) affiliate.¹⁰³ The following spring, New York teachers struck and subsequently obtained a detailed collective bargaining agreement. The National Education Association (NEA) responded rapidly to the AFT challenge. It could not do otherwise as the concept of exclusive recognition meant that it either must cede the field to the AFT or amend its position and image to permit its local affiliates to engage in representation elections and collective bargaining.

In the early 1960s, writers gave considerable attention to the rivalry between the NEA and AFT and to speculation about whether teacher bargaining would spread throughout the country.¹⁰⁴ School board leaders overtly opposed "both collective bargaining as advocated by the American Federation of Teachers and professional negotiations as advocated by the National Education Association."¹⁰⁵ By 1968, however, it became apparent that collective bargaining had become an acceptable method of determining teacher salaries and working conditions.

From 1965 to 1967, nine state statutes providing for teacher bargaining were enacted; prior to 1965, only Wisconsin had such a statute.¹⁰⁶ In 1964 an extensive survey of comprehensive bargaining agreements between teachers and school boards unearthed only 17 such documents. By 1968 this number had increased to over 600 (covering about 300,000 teachers), and, if one counts those agreements which recognize a teacher organization but are not comprehensive, there were approximately 2,200 agreements (covering about 900,000 of the almost two million teachers).¹⁰⁷ During

the 1967-1968 school year there were 114 strikes which accounted for 80 percent of the man-days lost through strikes by teachers since 1940.¹⁰⁸ It is estimated that this number of strikes increased by 23 percent in the following year.¹⁰⁹ By 1971, teacher bargaining was commonplace, and most major cities had been threatened with or had undergone one or more teacher strikes.

A description of the development of teacher bargaining in the past decade is found in the first chapter of *The Impact of Negotiations in Public Education* by Charles Perry and Wesley Wildman.¹¹⁰ An account of the New York City breakthrough is described in *Collective Negotiations for Teachers* by Myron Lieberman and Michael Moskow.¹¹¹ The Perry-Wildman volume is more recent and has a selective bibliography listing the major works in the field. The Lieberman-Moskow book, published in 1966, is somewhat dated but is still a basic reference book containing considerable documentation and a lengthy bibliography. Several books of readings have appeared, the most recent of which, edited by Carlton and Goodwin,¹¹² includes 31 articles ranging from a description of the Florida teachers' strike to a section on negotiations in higher education.¹¹³

At the end of the last decade there was less concern about such matters as whether or not teacher bargaining procedures should differ from those used by other public employees, and more attention focused upon the scope of bargaining and the effect of bargaining on resource allocation in education. In their chapter in the international compendium of activities of teacher unions,¹¹⁴ Moskow and Robert Doherty identify what they believe to be the future issues in this field. One of these is that bargaining may have shifted resources from educational programs to teacher benefits.¹¹⁵ Although there is limited research on this point, Hirschel Kasper suggests that, to date, bargaining does not seem to have caused a significant reallocation of educational resources.¹¹⁶ The other problem that Moskow, Doherty and others have identified is that teachers as professionals are using bargaining to achieve professional goals that influence the nature of educational services to be offered.¹¹⁷ This raises the question of whether community influence in our school system is being reduced, and how the views of par-

ents and other third parties may be fitted into the bargaining process.

Bargaining in education is starting to spread to the college level. City or community colleges controlled by boards of education that dealt with organized public school teachers found themselves under pressure to bargain with their college faculties. State laws in Michigan and New York, for example, extended bargaining rights to professors at public universities. In a few instances, faculties that had traditionally engaged in governance through academic senates, turned to outside representation. The American Association of University Professors (AAUP), which opposed the notion of unionism and exclusive recognition until late in 1969,¹¹⁸ shifted for much the same reason as the NEA and in 1970 and 1971 competed in representation elections with AFT- and NEA-supported groups. Summaries of these developments can be found in articles by Charles Rehmus, Martha Brown, Joseph Garbarino, and Donald Wollett.¹¹⁹

Strikes and Their Prevention

For the first eight years of the past decade, the level of strike activity was very low, with man-days lost to strikes running less than one-fifth of one percent of total working time. In the three years ending in 1970, it increased to almost twice that amount.¹²⁰ Research about strikes falls into three categories: the continuing analysis of work stoppages primarily by the BLS; the attempts to predict and explain the fluctuations in strike activity; and the prescriptive literature dealing with the regulation of strikes.

BLS provides annual statistics showing the various dimensions of strikes such as number of workers involved, duration, industry affected, major issues, and geographic location. Most of the time lost due to strikes was attributable to disputes arising in connection with the renegotiation of the terms of the labor agreement.¹²¹ The primary issue usually was wages. Approximately one-third of the strikes occurred during the term of the agreement, and were generally of short duration accounting for slightly less than 10 percent of the man-days lost. The typical dispute involved contract administration or inter-union issues.¹²² The proportion of man-days lost in the 1960s because of strikes was less than the proportion

during the previous decade but the mean duration of stoppages increased.¹²³

One of the basic volumes about strikes, published prior to the period under review here, was *Industrial Conflict* edited by Arthur Kornhauser, Robert Dubin, and Arthur M. Ross.¹²⁴ In it, Dubin predicted that the level of industrial conflict would remain stable for the next several decades. A dozen years later, he examined his predictions against the actual events of the 1954-1963 decade, the first to occur after his prognostication.¹²⁵ As one might infer from the fact that he wrote an article about his prediction, events of those years supported his hypotheses. Since they are long-run predictions, however, it will be interesting to see if he is equally accurate in the following ten-year period from 1964-1973. With the record 70 percent complete, the results are still in doubt.

The late Arthur Ross continued his interest in strikes and, with Paul Hartman, wrote *Changing Patterns of Industrial Conflict*.¹²⁶ This book, published in 1960, analyzes the strike record in 15 noncommunist relatively industrialized countries, mainly western European nations but including also the United States, Japan, Canada, Australia, India, and South Africa. The introductory chapter sets out his primary point clearly—"We find a pronounced decline in strike activity throughout the world."¹²⁷

Ross's purpose in writing this volume was to supply perspective on the question of whether or not collective bargaining could exist without a basic reliance on the use of the strike weapon. He concludes that it can and will but that the level of strike activity in the United States will not decline as greatly as it did in Western Europe. This volume has many hypotheses for scholars to test. Ross and Hartman state as one general expectation, "We do not see any substantial evidence of any impending revival of strike activity in the Northern European countries."¹²⁸ A contrary view is that we will see instead a convergence of European and American patterns with European and U.S. stoppages approaching the same level.

Another idea introduced by Ross in an article published subsequent to the book previously cited was that there was a "residual level of conflict."¹²⁹ He defined this as the amount of strike activity outside the major centers of conflict. He estimated that in the

1960s, if the four major active strike cycles in basic steel, construction, electrical equipment, and machinery became dormant, and if no new ones emerged, the residual level would be about 18,000,000 man-days a year, an amount that would not generate any real pressure for changes in the industrial relations system. Although strike activity has exceeded this residual level, this concept is useful in understanding fluctuations in the volume of strikes.

John Dunlop distinguished "four major functions of strikes over agreements among established parties: to change the nature of bargaining, to change the relations between the principal negotiators and their constituents in unions and managements, to change the budget allotment or policy of a government agency, and simply to change a bargaining position of the other side."¹³⁰ He stated that disputes about the terms of new agreements offered the greatest scope for the development of new procedures to further reduce the incidence of strikes.

In an article published in 1967, Neil Chamberlain, who had written extensively about the strike in the previous decade, posed the questions: "Are strikes a serious problem? If so, are they a more serious problem now than formerly? If they are, is this because the public is more impatient in its reaction? In either event, should 'something' more be done about them?"¹³¹ His answer seems to be that we should "open for examination the question of whether the purposes it (the strike) is designed to serve cannot be achieved in ways which are more compatible with contemporary social organization. . . ."¹³²

Orme Phelps wrote a critique of the arguments against compulsory arbitration and concluded that its use should be considered "without prejudgment based on sweeping generalizations or haphazard analogies."¹³³ Carl Steven lends support to that view.¹³⁴ He found that under certain conditions, compulsory arbitration does not destroy free collective bargaining as is sometimes alleged.

In the colloquy between A. H. Raskin and John Dunlop, Raskin suggested that bargaining needed overhauling and that occasional resort to compulsory arbitration might well have a place in the revised system.¹³⁵ Dunlop was more cautious and would restrict government to "some form of ad hoc legislative intervention, after all established procedures have been exhausted."¹³⁶ George Shultz

argued against the need for government intervention. In his view, this country must develop more tolerance for conflict in order to preserve private decision-making processes.¹³⁷ A beneficial aspect of the continuing discussion about the role of the strike is the renewed attention given to the mediation process. The Federal Mediation and Conciliation Service (FMCS) has moved from a passive posture to a more aggressive one. Instead of waiting to be called in at the height of the crisis, the FMCS tried "preventive mediation" in several hundred cases.¹³⁸ Carl Stevens suggests that late intervention by mediators may be preferable to early intervention.¹³⁹ He is not opposed to the strategy of preventive mediation but would give it a different name. He regards the improvement of bargaining arrangements through the creation of study committees and other means as a separate function that should be distinguished from mediation.

In his review of the literature on mediation that was published between 1950 and 1965,¹⁴⁰ Charles Rehmus comments upon the value and weaknesses of various analyses of mediation, suggests that insufficient attention has been given to this subject by researchers, and urges that a systematic analysis be made of the labor mediation function as an entirety.

Disputes in the railroad industries ran the gamut of procedures and forced Congress to pass legislation on several occasions that terminated strikes, determined the amount of the wage increase and authorized arbitration of the remaining issues.¹⁴¹ Also, President Nixon has suggested that the national emergency dispute provisions of the LMRA be amended to permit "final offer selection," a form of compulsory arbitration in which the arbitrator must choose between alternatives formulated by the parties, rather than fashion his own award.¹⁴² If a new consensus is emerging in the field of strike regulation, it seems to this writer, it is that essential services, whether local or national in character, and whether privately or public owned, should be subject to compulsory arbitration rather than to strikes.

Contents of the Labor Agreement

In this section, some of the so-called noneconomic items in a labor agreement will be reviewed.¹⁴³ These include union security,

management rights, subcontracting, worker participation in management, seniority, and inter-plant transfers. The grievance and arbitration procedure is treated separately in the following section.

Unions lobbied unsuccessfully for the repeal of Section 14 (b) of the Labor Management Relations Act (LMRA) throughout the decade. They almost achieved their objective in 1965 and 1966 but were blocked by filibusters led by the late Senator Dirksen.¹⁴⁴ Several scholars reviewed the union security question, mainly in the period prior to 1965. Frederic Meyers analyzed the impact of the Texas right-to-work law on union power and found it minimal.¹⁴⁵ James Kuhn disagreed and thought that more research needed to be done to prove that such legislation did not reduce union strength and membership.¹⁴⁶ Sanford Cohen raised the idea of reinstituting the use of the referendum in order to obtain the workers' views on whether they wish to be covered by a union shop contract.¹⁴⁷ In summarizing the union security issue in the 1962 IRRA volume, Paul Sultan concluded that the resistance power of management may not be sufficient to protect individual worker's rights if union membership is mandatory.¹⁴⁸

Management rights were explored from different points of view by many writers. The revised version of the late Sumner Slichter's classic, *Union Policies and Industrial Management*,¹⁴⁹ was published in 1960 shortly after his death. Slichter and two of his colleagues, James Healy and Robert Livernash, produced what was in essence a new volume,¹⁵⁰ almost twice the size of the original, containing a comprehensive review of the subjects of bargaining. They point out that the "scope of managerial discretion has been narrowed . . . by the terms of the union-management contract and by the administration of the union-management contract."¹⁵¹

The revised Slichter volume contains a chapter on subcontracting, an aspect of the management rights problem that drew considerable attention in the past decade. It explains why unions and managements have chosen to maintain an ambiguous silence in the labor agreement and thereby leave to the arbitrator the determination of whether or not it is proper to subcontract in the particular circumstances under review.¹⁵²

A 1960 conference about management rights led to the publication of a symposium on that subject in the *Industrial and Labor*

Relations Review in 1963.¹⁵³ Neil Chamberlain provided the broad frame of reference and nine other authors, most of whom are well-established arbitrators or practicing attorneys specializing in labor matters, focus upon the work assignment and subcontracting aspects of the management rights question. Allan Dash's survey of arbitrator decisions and the reasons for their awards in subcontracting cases draws attention to the competing "reserved rights" and "implied limitation" theories of management prerogatives.¹⁵⁴

The BLS examined major labor agreements, defined as those covering 1,000 or more workers, to ascertain the patterns of management rights and union-management cooperation.¹⁵⁵ The study showed that in 1963-1964, slightly less than half of the agreements contained a formal management rights provision.¹⁵⁶ It also found that only 5 percent of all major agreements called for joint union-management committee to deal with issues that are "normally a sole management prerogative."¹⁵⁷ In addition, the BLS conducted studies of subcontracting in 1959 and 1966¹⁵⁸ and found that the number of provisions on this subject in major agreements had doubled. The two-page introductory portion of the second study summarizes the legal background of the subcontracting problem and the types of collective bargaining clauses sought by unions to protect job opportunities.

The subject was still being debated in 1969 when Charles Killingsworth devoted his presidential address at the annual meeting of the National Academy of Arbitrators to "Management Rights Revisited."¹⁵⁹ He reviews the support for the view that all but the enumerated rights are reserved to management and finds that silence in the labor agreement still may have more than one meaning and therefore will not guarantee to management that its reserved rights view will prevail.

Margaret Chandler's volume, *Management Rights and Union Interests*,¹⁶⁰ deserves special mention because, as a sociologist, she brings to bear the organizational analysis of the subcontracting problem as opposed to the legal approach of some other writers. She concludes that the argument about management rights reflects the practical day-to-day approach of managements and unions to the problem of equitably distributing work and is best understood

as a variable related to changes in technology and the structure of the organization.¹⁶¹

Renewed interest was expressed in the idea of worker participation in management at the end of the decade. Adolf Sturmthal, reviewing the experience of the United States for the International Labor Organization (ILO),¹⁶² showed that the participation of workers in management came primarily through the usual bargaining processes rather than by special structural arrangements. In a brief glance at the future, he notes that the growth of large scale organization may hamper participation of the individual worker just at the time when rising educational levels may strengthen his desire to do so.

Milton Derber examined worker participation in management in several countries.¹⁶³ He found that academic interest in this subject, spurred by the ILO research project, exceeded any evidence of achievement that he could find, and he concluded that there is uncertainty today in the world about the need for worker participation in management and whether it brings about sizable efficiency benefits for management and desirable self-actualization benefits for individual workers. In their analysis of the role of labor in the American community,¹⁶⁴ Derek Bok and John Dunlop concluded that the impact of collective bargaining on productivity was uncertain although the "available evidence suggests that there has been a decline in [restrictive] practices and rules."¹⁶⁵

Seniority problems drew very little attention in the period under review. At the outset, Arthur Ross wrote an intriguingly titled article, "Do We Have a New Industrial Feudalism?" in which he investigated whether seniority provisions were causing a reduction in the quit rate.¹⁶⁶ He concluded that variations in the quit rate were primarily a function of the number of alternative job opportunities. He stated that the small drop in the quit rate in the 1950s was probably attributable to the spread of unionism, the age distribution of the labor force, the stability of manufacturing employment, and only minimally to the effect of seniority rules.

The BLS studied the use of seniority in promotions and transfers.¹⁶⁷ Over 90 percent of the agreements containing promotion details provided that seniority would be considered in making promotions, but more often than not in combination with other

factors such as skill, merit, and aptitude. The BLS found that the lower the level of skill required on the job, the more likely the requirement that promotion would be based primarily on seniority. As job requirements increase, merit and ability play a more important role.¹⁶⁸

Frederic Meyers examined the meaning of seniority in a more analytic frame of reference than that used by the BLS.¹⁶⁹ He points out that seniority became important in situations where the employees looked to the employer rather than the market for job security. The analogy is drawn between the seniority drive of the industrial worker and the restriction of entry, closed shop, market exclusion tactics of the construction craftsman. This interpretation of seniority as an affirmative expression of a job right is preferred by Meyers to the negative antidiscrimination function that it performs.

BLS found that slightly more than 20 percent of the major agreements had clauses providing some form of worker protection when a plant moved or when one plant of a multiplant corporation closed. Clauses in the labor agreements in which protection was provided include reference to such topics as advance notice of closing, protection of the union's exclusive recognition rights, guarantees of employment for the workers, interplant transfer rights, and relocation allowances. Details of these clauses are discussed in the BLS study.¹⁷⁰

In the 1963 IRRA volume, *Adjusting to Technological Change*, Charles Killingsworth and Arnold Weber, among others, review the operation of various collective bargaining procedures to mitigate the problems arising from shrinking job opportunities.¹⁷¹ Many of the cooperative approaches reviewed by Killingsworth have been discussed in the earlier section on automation. The extension of seniority and job rights from one plant to others of a multiplant corporation is an interesting development that Weber analyzes in some detail. He shows how successively greater protection to high seniority workers is afforded by preferential hiring, replacement by attrition, and interplant bumping rights. He also explores that dismal problem of establishing systems of seniority rights that will distribute jobs in an equitable fashion when the number of applicants exceeds the number of jobs.¹⁷²

An unusual aspect of seniority emerged in the 1967 automobile industry negotiations with the appearance of "reverse seniority" clauses. As yet researchers have not explored this phenomenon, but public statements and position papers by the United Automobile Workers (UAW) and General Motors and others, as well as newspaper stories, set out the nature of this departure from the past. Essentially the level of fringe benefits is high enough that senior employees prefer to take limited term layoffs for inventory and like purposes, rather than permit junior employees to receive this mandatory time off with almost full income. Many local seniority agreements now permit senior employees to opt for layoffs, but as yet the manpower and industrial relations consequences of this system are unclear.

Grievance and Arbitration Procedure

If there is any one aspect of collective bargaining that has worked rather well in the 12 years since it was reviewed in an IRRA volume,¹⁷³ it is the grievance arbitration procedure. The Supreme Court has proclaimed it as the desirable method to use in the adjudication of disputes arising during the life of the agreement and has given broad scope to the process where there is a question about the arbitrability of a grievance.¹⁷⁴ The BLS studies of the prevalence of contractual grievance procedures¹⁷⁵ and the arbitration step¹⁷⁶ show that acceptance of this process has become almost universal.

BLS studies in the early 1950s showed that 94 percent of the agreements contained grievance procedures and that 89 percent contained arbitration provisions. A decade later, the BLS found grievance procedures in 99 percent of the agreements and arbitration provisions in 94 percent of them.¹⁷⁷ These two BLS bulletins describe in detail the various patterns of grievance and arbitration procedures, the scope of issues treated, and the steps followed. Many illustrative contract clauses are included.

The volume of arbitration cases has risen steadily during the past decade. A comparison of 1960 and 1970 FMCS statistics shows that the annual number of panels requested and direct appointments made rose from 2,800 to 10,000, the number of arbitrators appointed increased from 2,000 to 5,300, and the number of awards

increased from 1,300 to 2,800.¹⁷⁸ The greater resort to arbitration may reflect continuing satisfaction with the process, or possibly an increasing inability of unions and managements to resolve grievances short of arbitration, or growing discontent by rank and file workers which forces the parties to take cases to arbitration that they may privately regard as frivolous. Although there is no conclusive evidence on this point, one study of "distressed" grievance procedures found that overuse flowing from political factors, worker unrest, or management and union ineptness was a problem in only a minority of the bargaining units.¹⁷⁹

Complaints about the slowness of the arbitration procedure, its high cost, and increasing formality and legalism were voiced during the decade.¹⁸⁰ These were given careful consideration in *The Labor Arbitration Process* by Robben Fleming.¹⁸¹ He did not find that arbitrator fees are excessive,¹⁸² and suggested that, to the extent costs are a burden to the parties, they may reduce them by choosing a simple rather than a "deluxe" procedure. He mentions that costs may be substantially diminished by doing away with transcripts, legal representation at hearings, hotel hearing rooms, briefs, and lengthy arbitral opinions.¹⁸³ The parties are aware of these cost-saving approaches but possibly have not pressed for them because the cost problem is not critical and because one or both of the parties prefer the deluxe procedure.

Charges of excessive formalism and legalism are discounted somewhat by Fleming and other leading arbitrators,¹⁸⁴ but excessive delay is acknowledged as a problem. Again, the solution to the delay problem lies within the power of the parties, if they are willing to simplify the procedure by the adoption of the changes noted above. FMCS data show that it takes about 80 days for a grievance to progress through the lower written steps of the procedure to the point when it receives a request to appoint an arbitrator. About another 160 days elapse before an award is issued.¹⁸⁵ The idea that it takes 240 days to resolve a grievance sounds horrendous but actually may not be so bad.

The time that is at least partially under the control of the arbitrator runs from the date of the hearing to the award. This has been relatively constant, holding firm at about 50 days,¹⁸⁶ a figure which seems reasonable when one takes into account the

time taken to transcribe the hearing record and for the parties to submit post-hearing briefs. The 80 days taken to discuss the case at the lower steps of the grievance procedure may give the parties several chances to review the problem and to change positions. Just the extended opportunity to argue about a case may have a salutary effect on the labor relations climate in the plant. Further research about the effect of the slow-moving procedure is in order before condemning it and suggesting that it be radically modified.

When the grievance and arbitration procedure is viewed from its effect on daily relations, the complaints noted above about the arbitration step may seem less important. In his book about grievance settlements, James Kuhn emphasizes the importance of the daily bargaining that takes place and the use of the grievance procedure to advance the ends of the different work groups included in a bargaining unit,¹⁸⁷ a process he characterized as fractional bargaining. Several years later Kuhn again examined the grievance procedure and concluded that the informal, decentralized processing of grievances was sound.¹⁸⁸

Another area of interest in the grievance arbitration field is the question of how well a discharged employee fares when he is reinstated by an arbitrator. Dallas Jones explored this in depth in two companies,¹⁸⁹ and subsequently he compared his findings with those that Arthur Ross had reported in an earlier study.¹⁹⁰ Essentially, both Jones and Ross found that a majority of the reinstated employees returned to work and did well on their jobs. In particular, long-service employees, whose record had been good before the incident causing the discharge, made successful adjustments upon their return to work.¹⁹¹

Charles Killingsworth and Saul Wallen reviewed the use of permanent arbitration systems and found an evolution from a broad delegation of authority to an umpire who was encouraged to mediate disputes to a more narrow judicial approach.¹⁹² They concluded that there is no one best approach to labor arbitration and that arbitration systems should be fashioned to fit the environments in which they operate. Robert Repas examined why some local unions negotiate contracts which do not provide for arbitration, and found that, primarily because of financial limita-

tions and tradition, they prefer an arrangement which permits strikes rather than arbitration.¹⁰³

Finally, reference should be made to the annual volumes of the National Academy of Arbitrators (NAA) and the recently published volume on arbitration by Paul Prasow and Edward Peters.¹⁰⁴ The Prasow-Peters book presents the concepts of arbitration that prevail among arbitrators and contains an excellent labor arbitration bibliography.¹⁰⁵ Many of the articles cited previously were published in the annual volumes of the NAA. Because these volumes include many more worthwhile contributions which are not reviewed here, attention is directed to the cumulative index in the latest volume in which can be found a listing of topics and authors.

Bargaining in Agriculture, Higher Education, and Civil Rights

Perspective about the breakthrough in agricultural bargaining in the California grape fields can be gained from Stuart Jamieson's history of *Labor Unionism in American Agriculture*.¹⁰⁶ Mexican farm workers started a grape pickers' union in California in 1922, built a stable organization in the latter part of that decade,¹⁰⁷ and in the 1930s were involved in strikes in the harvesting of grapes, other fruits, vegetables, and cotton that eventually led to the destruction of the union.¹⁰⁸ Although Cesar Chavez started afresh in 1962 in California's San Joaquin valley when he began recruiting workers into his union, his was by no means the first effort to unionize agricultural workers.

Despite their increasing productivity, the real wages of hired farm laborers did not rise from 1910 to 1930 and did not show any improvement until shortly before the start of World War II.¹⁰⁹ After the war, there was a renewal of the dispute about whether it was necessary to import agricultural field hands or whether California manpower was sufficient to harvest the crops. Lloyd Fisher's study of the harvest labor market in California concludes that "government agencies have been sufficiently responsive to the claim of labor shortage, so that labor has never been scarce enough to be worth economizing."²⁰⁰

In 1952 Alexander Morin summed up the prospects for organizing farm workers.²⁰¹ He mentions the importance of racial and

cultural homogeneity, the concentration of employment in particular locations or the moving of stable groups over the same route, the need for the union to function as a farm labor contractor, the need for agricultural workers to supply the impetus for organization rather than to rely upon unions outside of agriculture, and that, on the basis of the factors he summarized, organization would most probably appear in places such as California.²⁰²

The early stages of Cesar Chavez's fight in the late 1960s are described by John Dunne.²⁰³ He reviews the start of the strike by a small AFL-CIO sponsored group, the internecine warfare between Chavez's United Farm Workers Organizing Committee (UFWOC) and the Teamsters, the consumer boycott of certain brands of wines and liquor, the labor agreement with Schenley, and the first Di Giorgio recognition election. Despite the initial victories of the union, Dunne was not optimistic about its chances of organizing California agriculture.

Varden Fuller relates the onset of bargaining to other changes including the establishment of a national minimum wage for farm labor, the termination of the bracero program, the concern of the Federal-State Employment Service for the employees as well as the growers, technological changes, and the declining opposition of the public to farm unionization even though it might mean higher prices.²⁰⁴ He concludes that for the large number of more than incidentally employed but less than fully employed agricultural workers, there is a good prospect that the interaction of the factors enumerated above will bring about a new era for farm labor.

The BLS published a group of articles in June 1968 about the urbanization of the rural work force and the spread of collective bargaining to agriculture.²⁰⁵ Karen Koziara comes to the same conclusion as Fuller about the advent of bargaining.²⁰⁶ Mark Erenburg describes attempts to organize migratory agricultural workers in Wisconsin and cites the importance of labor relations legislation protecting the right to unionize and bargain.²⁰⁷

Congressional committees are reviewing the question of what type of labor relations legislation best fits the agricultural sector. Chavez wants legislation modelled after the Wagner Act which would permit recognition picketing, the secondary boycott, and exemption from state right-to-work statutes.²⁰⁸ In the coming dec-

ade, it appears that agricultural legislation may be passed, but whether it will be more protective than restrictive of farm-worker rights is not clear. The UFWOC, with the help of the AFL-CIO, the UAW, Catholic, racial, and student groups, continues to press forward its organizing efforts in Florida, Texas, and elsewhere. The Teamsters and Meatcutters unions also are engaged in similar organizing efforts. Bargaining has not yet won widespread acceptance in agriculture, but it has gained a substantial foothold.

Industrial relations and university labor-management relations are connected in several ways. Many past presidents of the IRRA have held important university posts: for example, J. Douglas Brown (1952), Dean, Princeton University; Clark Kerr (1954), President, University of California; William Haber (1959), Dean, University of Michigan; John Dunlop (1960), Dean, Harvard University; Edwin Young (1965), President, University of Maine and subsequently Chancellor, University of Wisconsin; and Arthur M. Ross (1966), Vice President, University of Michigan. They and others have delivered papers to IRRA meetings discussing problems of university administration and how training in industrial relations helps.

J. Douglas Brown opened the subject at the 1968 Spring meeting when he analyzed the university structure in terms of where it fell in the "command-response" spectrum, that is, how many of its decisions were based on command as opposed to voluntary response to a need seen by members of the organization.²⁰⁹ He concluded that many pressures were moving the campus toward the command position and that students of industrial relations should favor strong administrations while still protecting academic freedom and "pluralistic initiative in the search for truth."²¹⁰ A spirited discussion followed the presentation of his paper.

At the IRRA Christmas meeting that year, Clark Kerr gave a paper and chaired a session on Issues in Higher Education in which he was joined by Edwin Young, John McConnell (President, University of New Hampshire) and Allan M. Cartter (Chancellor, New York University).²¹¹ They set forth the lessons from industrial relations that apply to university relations, the differences that they see between industrial relations involving workers and university relations with students, and stress the need for the presi-

dent to be a strong administrator, an innovator, and a gladiator, rather than a mediator.²¹²

In the spring of 1969, Howard Bowen, then president of the University of Iowa, presented the case for participation by all groups in university governance through a "joint council" which should have advisory power to the president.²¹³ In December, Frederick Harbison devoted his IRRA presidential address to the parallels between student-university relations and employee-management relations.²¹⁴ His central thesis was that the university, if it proves fair but firm, may emerge as a better institution because of its need to respond to growing student power.

Arthur Ross discussed the problems of bargaining with students at an NAA meeting and suggested that campus problems were sufficiently different to warrant the use of an "ombudsman."²¹⁵ John McConnell's paper, given at the 1970 IRRA Spring meeting, emphasized the need for further studies of university structures.²¹⁶ He stated, "The use of existing concepts derived from civil government or corporate government including labor relations may indeed constitute a drift into impractical and ineffective procedures for administering very complicated organizations."²¹⁷

Advocates for "anti-establishment" changes in university administration do not publish in industrial relations journals nor are they industrial relations scholars or practitioners. Information reflecting their viewpoint is found in the literature published by the New University Conference (NUC), a national organization of self-styled radical faculty, staff, and students who work in and around institutions of higher education and who are attempting to replace "an educational and social system that is an instrument of class, sexual, and racial oppression with one that belongs to the people."²¹⁸ NUC favors such changes as: disarming campus policemen, stripping ROTC of its academic standing in the curriculum, withdrawing university support from fraternities and sororities which are racist, establishing an autonomous Afro-American Studies program, appointing blacks and females to responsible university administrative positions, recruiting more black students, banning military recruiting from the campus, abolishing restrictions on visitation, adding female, black, and student members to the board of trustees, doing away with grades and required

courses, opening up the schools without regard to qualifications or finances (called the OUTS programs), and transforming the university into a body of the whole in which students, faculty members, and staff have an equal vote.²¹⁹ The debate between NUC and IRRA members has not been joined in academic journals but the NUC program is the substitute favored by NUC members in preference to the industrial relations approach with which IRRA members are familiar.

Although faculty bargaining is reviewed earlier in the section about teacher bargaining, it is appropriate to note at this point the remarks of Jack Barbash about the role of faculty in governing the university.²²⁰ He finds that "Much of the professor's status as an employee of the university fits well into this general model of the employer-employee relationship; and of course in fact the professor is much like other employees working for the general run of employers."²²¹

Solutions to campus unrest and papers about it were presented also by others outside of the universities. Sam Zagoria, then an NLRB board member, suggested that mediation and other techniques of industrial relations could help keep campuses peaceful.²²² The American Arbitration Association (AAA) established a Center for Dispute Settlement to help solve disputes on the campus and in the community. The first director, Samuel Jackson, stated that the Center's primary goal was to introduce the use of mediation and arbitration as a means of resolving urban community conflicts, many of which involved racial disputes.²²³

This brings us next to the attempts of those people with a background in industrial relations to be helpful in the resolution of racial tensions. The 1967 IRRA Spring meeting was devoted to parallels between the industrial conflict of the 1930s and the racial conflict of the 1960s.²²⁴ Neil Chamberlain introduced the subject and noted the many similarities in the aims and techniques used by the participants in these two struggles.²²⁵ Kenneth Boulding attempted to fit both types of disputes into a more general theory of conflict resolution.²²⁶ The taped and edited discussions of means and ends used in the two periods and the public reaction to the struggle and its significance provide an overview of racial problems and possible solutions.

Several articles have been written about the use of mediation in solving racial disputes. Jerome Barrett enumerates the ways in which differences between racial and labor disputes make mediation efforts more difficult.²²⁷ In racial disputes, mediators do not have the same legal standing or status, rules facilitating the use of mediation do not exist, and the absence of a legally chosen bargaining agent and the difficulty in identifying management complicate the situation. Warren Taylor emphasizes the need for the community to view black efforts as attempts to "share" in the fruits of society rather than to destroy it.²²⁸

Theodore Kheel believes that it is essential to create a Board of Mediation for Community Disputes,²²⁹ and recommends that we should explore ways of determining how to select the representatives of different community interests and what subjects lie within the scope of bargaining.²³⁰ Kheel's efforts and the sympathetic response from the Ford Foundation led to the creation of such mechanisms.²³¹ One of the first projects was the attempt to improve relations among students, teachers, and community groups in several high schools in the New York City area.²³²

Samuel Jackson pointed out at an NAA meeting that arbitration of community and civil rights disputes may generate solutions that conflict with rights flowing from the labor agreement.²³³ This led to consideration of the conflict between arbitral awards and the criteria used by the Equal Employment Opportunities Commission.²³⁴ Jean McKelvey stated subsequently in an article, "Sex and the Single Arbitrator," her NAA presidential address, that these conflicts may be resolved in the future by judicial "deference to arbitral awards which meet criteria still to be established."²³⁵

Bargaining Theory, Structure, and Process

Attempts were made during the decade under review to formulate new bargaining models. Some authors recast variables in new relationships, some specified different variables, and some gave empirical content to the model and tested it. Most of the efforts built upon the earlier models of Hicks,²³⁶ Pen,²³⁷ Schelling,²³⁸ and Chamberlain.²³⁹ Myron Joseph summed up the more recent efforts in 1965,²⁴⁰ when he said, "Stevens²⁴¹ formulated a conflict-choice

model based on a theory of individual behavior. Mabry²⁴² stated his formulation in terms of pain and pleasure, Walton and McKersie²⁴³ used the concept of subjective expected utility, and Kuhn²⁴⁴ describes a bargaining power model in terms of relative evaluations of the bargaining terms."²⁴⁵

The Walton-McKersie volume investigates bargaining behavior, and uses behavioral theory to supplement the primarily economics-oriented theories on which it is built. The authors believe that their "disutility minimization model [as opposed to maximization models] is a more accurate description of how negotiators behave, primarily because of organizational goal formation and the sanctions which constituents will impose upon a negotiator should the goal not be achieved."²⁴⁶

Unfortunately, however, if the views of the theorists about the models of their colleagues are to be believed, we have not made great strides. The exchange between McKersie-Walton and Mabry about the virtues and defects of their respective models in 1965²⁴⁷ was replicated several years later when Pao Lon Cheng²⁴⁸ developed a model in which he attempted to (1) give elegant mathematical content to Neil Chamberlain's formulation of bargaining power, (2) generate concession curves from the utility functions of the bargainers at different stages in the negotiations, and (3) provide insights into the earlier argument between Mabry and McKersie. This contribution was evaluated harshly by Edward Saraydar²⁴⁹ who said, "Unfortunately, Pao Lun Cheng's recent article provides us with more obfuscation than insight. First Cheng—in an attempt to establish congruence between his concept and those of others—has misinterpreted Chamberlain's view of bargaining power. Beyond that, Cheng's own concept of bargaining power is ill defined, in that it has no logical basis in uncertainty."²⁵⁰ In response to this comment, Cheng noted, "The major object of my article was to pursue the hypotheses that the subjective probabilities of the bargainers are functions of their bargaining powers and that the latter are in turn functions of the utilities of their respective current demands and offers. Moreover, I went on to propose a reasonable but simple way of specifying such functions."²⁵¹

A model constructed by Orley Ashenfelter and George E. John-

son revises the usual two-party conflict between labor and management into a three-party model in which the goals of the union are distinguished from those of the rank and file worker.²⁵² They suggest that their model provides "predictions concerning the probability of a strike's occurrence and the expected duration of such a strike"²⁵³ and specify operational models to test their hypothesis. One implication of their analysis is that a straightforward solution to the outcome of union-management bargaining can be incorporated into conventional economic reasoning.²⁵⁴

The structure of bargaining and how it is changing was examined in the volume edited by Arnold Weber.²⁵⁵ It includes studies of bargaining structures in the meat packing, steel, chemical, agricultural implement, and construction industries. The article about the construction industry by John Dunlop explains the industrial relations system in construction, the forces giving it its shape, and how it may change in the future.²⁵⁶ Neil Chamberlain and Robert Livernash review the determinants of structures and how they are changing. Management and union interests in structure are presented, and a discussion of public policy problems is led by Douglass V. Brown, George Shultz, and George Taylor.

Several years later, Arnold Weber used terms such as the informal work group, the election unit, negotiation unit, and unit of direct impact to facilitate an understanding of bargaining structures.²⁵⁷ He identifies market factors, the nature of bargaining issues, representational factors, government policies, and power tactics as determinants of the bargaining structure, and shows how these factors explain the earlier consolidation of structures and the more recent tendency for some structures to fragment while others are consolidated further. Weber concludes that alterations in internal union structure and the strengthening of bargaining procedures should be favored, rather than making basic structural changes or decentralizing the entire bargaining structure into smaller independent negotiating units. A contrary view is advanced by William Chernish in his review of union coalition bargaining efforts.²⁵⁸

Coordinated bargaining attracted attention in the mid-sixties because of the clashes between conglomerates or giant corporations and Industrial Union Department (IUD) AFL-CIO spon-

sored alliances of local and international unions. On an IRRA sponsored panel,²⁵⁹ a spokesman for Union Carbide described his company's experience in resisting an IUD coalition effort and concluded that the high cost of the strikes that occurred were worthwhile investments if they preserved local plant bargaining.²⁶⁰ The union representative reviewed the IUD efforts and stated that coordination paid off handsomely in the 1966 General Electric Company negotiations.²⁶¹ George Hildebrand reviewed coordinated bargaining from the economist's point of view and hypothesized that "it is an admission of union weakness under the systems hitherto prevailing."²⁶² He suggests that this proposition can be tested by determining whether wage and fringe benefit gains in the target company had lagged relative to gains made at other companies.

Problems encountered in securing membership ratification of contracts led to an examination of this phase of the bargaining process by William Simkin, Clyde Summers, John Cooke and Owen Fairweather.²⁶³ Simkin was the first to call attention to the increased proportion of rejections, which peaked at 14.2 percent in 1967. Summers identified the greater complexity of the agreement, the breakdown in communication between union members and leaders, and political factionalism within the union as factors contributing to rejections. One solution to the contract rejection problem which Fairweather considered but did not accept was that the membership ratification procedure should be eliminated. Cooke recommended that union leadership devote more attention to planning the membership meeting in order to reduce the number of rejections caused by poor communication and faulty presentations. Interest in this problem has abated somewhat since these views were expressed because of the decline in the rejection phenomenon.²⁶⁴

Another possible change in the bargaining process would be the resolution of disputes about the terms of a new agreement by arbitration instead of by economic conflict. Pressures to do this in the public sector were discussed previously. Richard Miller found that in the private sector the parties resorted to arbitration of wage disputes only rarely between 1952 and 1965,²⁶⁵ and even less than in the previous period studied by Irving Bernstein.²⁶⁶

The use of computers in the bargaining process is discussed by a group of experienced practitioners and established scholars at a conference convened and reported upon by Abraham Siegel.²⁶⁷ In the conference summary, Douglass V. Brown observes that hunch and judgment will continue to play an important role but that there will be an increasing use of computers. As computer-furnished information increases in volume and makes available quickly to bargainers information that they formerly did not have, the judgments may be improved. To the degree that this new tool enables the parties to visualize more alternative solutions to their problems, it will become more difficult for mediators to provide new insights.²⁶⁸

In the period under review, collective bargaining was judged by many people from different points of view. Frederick Harbison regarded it as a limited purpose institution which could not be expected "to perform miracles which lie far beyond its legitimate scope."²⁶⁹ He did not give collective bargaining an important role in solving the problems of chronic unemployment, inadequate economic growth, persistent balance of payments difficulties, civil rights, or inflation or deflation. The functions he assigned to collective bargaining, and which he believes that it performs well, are to provide a partial means of resolving the conflicting economic interests of management and labor; to enhance the rights, dignity, and worth of workers as industrial citizens; to provide a bulwark for the preservation of the private enterprise system; and to provide a measure of industrial peace.²⁷⁰

Derek Bok and John Dunlop cite the results of public opinion surveys to show that union leaders are more sympathetic to liberal political programs than rank and file members and that the emphasis on job related matters reflects the desires of the members and the pressures of the environment.²⁷¹ Bok and Dunlop believe that intellectual critics of the labor movement "blame the union leader, while overlooking all the rank-and-file pressures that push the leader away from social involvement into a constant preoccupation with contract negotiations and administration."²⁷²

Jack Barbash examined the maturation of unions and the collective bargaining process, and stated that "union power has been the major initiating influence in rationalizing contract terms at

the level of the enterprise."²⁷³ He found that unions have long since passed through the voluntary fraternal association stage and now may be more appropriately regarded as public utilities. Some managements, however, adopted the philosophy identified as "Boulwarism,"²⁷⁴ under which a company maintained an active communication program directly with its employees and attempted to reduce the power of the union.

Union bargaining programs were critically appraised by Albert Blum who found them too narrow and suggested that they be broadened to include demands that increase worker satisfaction on the job.²⁷⁵ He stated that "the right of workers to have more discretionary power over their jobs (some truck drivers have fought for the privilege to take alternative routes than the one management designated), job rotation, and job enrichment are some examples."²⁷⁶ Blum also argues that unions must deal with frustrations of the workers outside of their jobs—urban blight, polluted air, transportation bottlenecks, etc.—and that unions in a more affluent society "now can afford to worry about the soul and, with the belly, make it a part of the labor body."²⁷⁷

A pessimistic assessment of collective bargaining was made in 1963 by Paul Jacobs who characterized it as "old before its time."²⁷⁸ He viewed collective bargaining as a general purpose instrument that could be used to help resolve those problems of society which Harbison regarded as beyond the scope of bargaining. Contrary to Jacobs' pessimistic forecast, however, collective bargaining did not die despite its continued emphasis on wages, fringes, and working conditions.

Instead, scholars and practitioners with bargaining backgrounds have resolved traditional problems in tolerable fashion and have found that they and their techniques of bargaining are transferable and useful in solving problems in fields far removed from labor-management relations in private industry. In conclusion, it should be acknowledged that there are interesting and worthwhile articles about collective bargaining which are omitted from this review either because of space limitations or because of the inability of the author to locate and cover all of the significant contributions of the past 12 years.

Footnotes

¹ Norbert Wiener, *The Human Use of Human Beings* (2nd ed. rev.; Garden City, N.Y.: Doubleday Anchor A 34, 1954).

² Ibid., 162.

³ In UAW Education Department Publication Number 331, *Automation: A Report to the UAW-CIO Economic and Collective Bargaining Conference*, November 12 and 13, 1954, (Detroit: January, 1955), p. 11, the union states, "The establishment of the guaranteed annual wage becomes imperative for workers in the face of these new and revolutionary changes"

⁴ See in particular pp. 123-126 of Ginsburg, Livernash, Parnes, and Strauss, *A Review of Industrial Relations Research*, Vol. 1, (Madison, Wis.: IRRA Series, 1970).

⁵ "The Benefits and Problems Incident to Automation and Other Technological Advances," Report from the President's Advisory Committee on Labor-Management Policy, January 11, 1962 (Washington: U.S. Government Printing Office, 1962).

⁶ *Impact of Automation*, BLS Bulletin 1287 (Washington: U.S. Government Printing Office, November, 1960).

⁷ "Automation," *The Annals*, special ed. Charles Killingsworth, 340 (Philadelphia: The American Academy of Political and Social Science, March 1962).

⁸ John Dunlop, ed., *Automation and Technological Change*, American Assembly Series (Englewood Cliffs, N.J.: Prentice-Hall, 1962, a Spectrum Book).

⁹ "Recent Collective Bargaining and Technological Change," BLS Report No. 266, March 1964 (Washington: U.S. Government Printing Office, 1964).

¹⁰ Rudy Oswald, *Adjusting to Automation*, AFL-CIO Publication No. 144, January, 1969.

¹¹ *Technology and the American Economy*, Report of the National Commission on Technology, Automation, and Economic Progress, Vol. 1, (Washington: U.S. Government Printing Office, February 1966).

¹² Public Law 88-444, U.S. Congress, August 19, 1964.

¹³ Howard R. Bowen and Garth L. Mangum, ed., *Automation and Economic Progress* (Englewood Cliffs, N.J.: Prentice-Hall, 1966, a Spectrum Book).

¹⁴ Ibid., p. 53.

¹⁵ Ibid., p. 54.

¹⁶ Ibid., p. 32.

¹⁷ *Implications of Automation*, BLS Bulletin No. 1319, and BLS Bulletin No. 1319-1, (Washington: U.S. Government Printing Office, February, 1962 and December, 1963).

¹⁸ Einar Hardin, William B. Eddy, and Steven E. Deutsch, *Economic and Social Implications of Automation, Vol. 2 Literature 1957-1960*; Einar Hardin, John M. Shepard, and Morris S. Spier, *Economic and Social Implications of Automation, Vol. 3 Literature 1961-1965* (East Lansing, Mich.: Michigan State University, 1961 and 1966).

¹⁹ James J. Healy, ed., *Creative Collective Bargaining* (Englewood Cliffs, N.J.: Prentice-Hall, 1965).

²⁰ Thomas Kennedy, *Automation Funds and Displaced Workers* (Boston: Harvard University, Division of Research, Graduate School of Business Administration, 1962).

²¹ The work of the Human Relations Committee is described in some detail on pp. 194-229 of Healy's *Creative Collective Bargaining*.

²² William Gomberg, "Special Study Committees," in *Frontiers of Collective Bargaining*, eds. John T. Dunlop and Neil W. Chamberlain (New York: Harper & Row, 1967), p. 237.

²³ George P. Shultz and Arnold R. Weber, *Strategies for the Displaced Worker* (New York: Harper & Row, 1966), pp. vii-viii.

²⁴ Ibid.

²⁵ James L. Stern, "Evolution of Private Manpower Planning in Armour's Plant Closings," *Monthly Labor Review* (December, 1969).

²⁶ This is described in *Creative Collective Bargaining*, pp. 137-165.

²⁷ Ibid., pp. 244-281.

²⁸ Gerald E. Balsley, "The Kaiser Steel-United Steelworkers of America Long Range Sharing Plan," in *IRRA Winter Proceedings*, 1963, pp. 48-58. Also see "Nation's Manpower Revolution," *Hearings before the Subcommittee on Employment and Manpower of the Committee on Labor and Public Welfare*, U.S. Senate, 88th Cong., 1st Sess., Part 5, pp. 1679-1702, October 4, 1963. (Washington: U.S. Government Printing Office, 1963).

²⁹ Louis Goldblatt and Otte Hagel, *Men and Machines* (San Francisco: International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association, 1963).

³⁰ Max D. Kossoris, "Working Rules in West Coast Longshoring," *Monthly Labor Review* (January 1961), pp. 1-10, and "1966 West Coast Longshore Negotiations," *Monthly Labor Review* (October 1966), pp. 1067-1075.

³¹ "Wage Chronology: Pacific Longshore Industry, 1934-70," Bureau of Labor Statistics, Bulletin 1568 (Washington: U.S. Government Printing Office, April 1968).

³² Healy, *Creative Collective Bargaining*, pp. 165-186.

³³ Kennedy, *Automation Funds and Displaced Workers*, pp. 70-101.

³⁴ Lincoln Fairley, "The ILWU-PMA Mechanization and Modernization Agreement," in *IRRA Spring Proceedings*, 1961 and "The ILWU-PMA Mechanization and Modernization Agreement: An Evaluation of Experience Under the Agreement; The Union's Viewpoint," *IRRA Winter Proceedings*, 1963. Also Wayne L. Horwitz on the same topic at Winter 1963 meeting with Fairley and Horwitz again, "The ILWU-PMA Mechanization and Modernization Agreement," *IRRA Winter Proceedings*, 1968.

³⁵ Kossoris, "1966 West Coast Longshore . . .," p. 1074.

³⁶ A. H. Raskin, "A Labor Reporter's Overview," in *IRRA Winter Proceedings*, 1968, pp. 165-166.

³⁷ See for example, comments in "Labor Month in Review," *Monthly Labor Review*, (January 1971), p. 2, and (February 1971), p. 2.

³⁸ The full text of the Order is printed in *Industrial and Labor Relations Review*, 15:4, (July, 1962), pp. 548-553.

³⁹ *Labor-Management Relations in the Federal Service: Report and Recommendations On & Executive Order 11491 of October 29, 1969* (Washington: U.S. Government Printing Office).

⁴⁰ Wilson R. Hart, "The Impasse in Labor Relations in the Federal Civil Service," *Industrial and Labor Relations Review*, 19:2 (January 1966) and John W. Macy, "Comment: The Federal Employee-Management Cooperation Program," *Industrial and Labor Relations Review*, 19:4 (July 1966).

⁴¹ Statistics in this and the following paragraph are taken from United States Civil Service Commission Bulletin No. 711-22 "Analysis of Data and Report on Union Recognition in the Federal Service." Highlights of this bulletin are reprinted in *Government Employee Relations Report*, No. 390, (March 1, 1971), pp. D1-D10 (Washington: Bureau of National Affairs), hereafter cited as GERR.

⁴² GERR Reference File, p. 41:1 summarizes the events leading to the passage of the Postal Reorganization Act. The text of the Act, Public Law 91-375, August 12, 1970, is found on pages 41:11-19; see particularly Ch. 10 & 12, "Employment within the Postal Service" and "Employee-Management Agreements."

⁴³ The Public Personnel Association cites as the three classic works of the pre-1962 literature its own *Employee Relations in the Public Service* (Chicago: Civil Service Assembly of the United States and Canada, 1942); Sterling D. Spero, *Government as Employer* (New York: Remsen Press, 1948); and Morton R.

Godine, *The Labor Problem in the Public Service* (Cambridge, Mass.: Harvard University Press, 1951).

⁴⁴ Some discussions of the Executive Order 10988 period are included in articles devoted primarily to bargaining in the state and municipal sector and are cited subsequently in the review of those developments.

⁴⁵ Wilson R. Hart, *Collective Bargaining in the Federal Service* (New York: Harper, 1961).

⁴⁶ Wilson R. Hart, "The U.S. Civil Service Learns to Live With Executive Order 10,988: An Interim Appraisal", *Industrial and Labor Relations Review*, Vol. 17, No. 2, January 1964.

⁴⁷ Hart, "The Impasse in Labor Relations"

⁴⁸ Harold S. Roberts, *Labor-Management Relations in the Public Service* (Honolulu: University of Hawaii Press, 1970).

⁴⁹ William B. Vosloo, *Collective Bargaining in the United States Federal Civil Service* (Chicago: Public Personnel Association, 1966).

⁵⁰ Aubrey J. Wagner, "TVA looks At Three Decades of Collective Bargaining," *Industrial and Labor Relations Review*, 22:1 (October 1968).

⁵¹ "Collective Bargaining Agreements in the Federal Service", *BLS Bulletin No. 1451* (Washington: U.S. Govt. Printing Office, August 1965) and "Negotiation Impasse, Grievance, and Arbitration in Federal Agreements", *BLS Bulletin No. 1661* (Washington: U.S. Government Printing Office, 1970).

⁵² *Government Employment Relations Report Reference File* (Washington: Bureau of National Affairs).

⁵³ Michael H. Moskow, J. Joseph Loewenberg, and Edward Clifford Koziara, *Collective Bargaining in Public Employment* (New York: Random House, 1970).

⁵⁴ For example, see the treatment by Felix A. Nigro, *Management-Employee Relations in the Public Service* (Chicago: Public Personnel Association, 1969).

⁵⁵ Moskow, Loewenberg and Koziara, *Collective Bargaining in Public Employment*, pp. 19-79.

⁵⁶ The 1969 report of the Advisory Commission on Intergovernmental Relations stated that 21 states had comprehensive statutes. These are listed by Joseph P. Goldberg in "Changing Policies in Public Employee Labor Relations," *Monthly Labor Review*, 93:7 (July 1970) pp. 8-10. Subsequently, as reported by Goldberg in the December, 1970 issue of the *MLR*, Hawaii and Pennsylvania also passed comprehensive legislation. In addition, however, as Harold Roberts points out in *Labor-Management Relations in the Public Service*, pp. 192-193, 42 states have provisions in the constitution, in statutes, or in attorney general opinions on this subject.

⁵⁷ *GERR Reference File* 51:5814. The original statute was enacted by the 1959 legislature. Subsections 1(c) and (4) were enacted by the 1961 legislature.

⁵⁸ *GERR Reference File* 51:2011-2016.

⁵⁹ Roberts, *Labor-Management Relations in the Public Service* Ch. 7, pp. 192-301.

⁶⁰ *GERR Reference File*, Section 51.

⁶¹ Joseph Goldberg, "Changing Policies in Public Employee Labor Relations," *Monthly Labor Review*, 93:7, (July 1970), pp. 5-14.

⁶² Roberts, *Labor-Management Relations in the Public Service*, pp. 468-495.

⁶³ Russell A. Smith "State and Local Advisory Reports on Public Employment Labor Legislation: A Comparative Analysis," *Michigan Law Review*, 67:891 (March 1969).

⁶⁴ *Report of Task Force on State and Local Government Labor Relations of the National Governor's Conference, 1967 and the 1968 Supplement to Report of . . . , 1969 Supplement to Report of . . . , 1970 Supplement to Report of . . .*, (Chicago: Public Personnel Association, 1967, 1968, 1969 and 1971).

⁶⁵ *Ibid.*, 1970 Supplement, pp. 46-62, by Arvid Anderson, Milton Derber, W. Donald Heisel, Martin Wagner, Frank P. Zeidler.

⁶⁶ *Labor-Management Policies for State and Local Government*, by the Ad-

visory Commission on Intergovernmental Relations (ACIR) (Washington: U.S. Government Printing Office, 1969).

⁶⁷ Ibid., p. 99.

⁶⁸ Twentieth Century Fund Task Force on Labor Disputes in Public Employment, *Pickets at City Hall* (New York: Twentieth Century Fund, 1970).

⁶⁹ Joseph P. Goldberg, "Changing Policies in Public Employees Labor Relations"; H.P. Cohany and L.M. Dewey, "Union Membership Among Government Employees"; and E. Wight Bakke, "Reflections on the Future of Public Sector Bargaining," *Monthly Labor Review*, 93:7 (July 1970), p. 5-25.

⁷⁰ 1970 Supplement, p. 70.

⁷¹ Gerald G. Somers, ed., *Collective Bargaining in the Public Service*, IRRA Spring Proceedings, 1966.

⁷² Session I—The Right to Strike in the Public Sector: "Canadian Legislation and Experience" by Arthur M. Kruger, "Avoiding Public Employee Strikes—Lessons from Recent Strike Activity" by Edward B. Krinsky, "Can Public Employees be Given the Right to Strike" by John F. Burton, Jr., "The Right to Strike in the Public Sector—A Discussion" by Donald J. White, and "The Right to Strike in the Public Sector—A Comment" by Melvin K. Bers, *Labor Law Journal* (August 1970) (IRRA Spring Proceedings, 1970).

⁷³ This position is stated most unequivocally in *Government Employee Negotiations and the Public Interest* (Washington: Chamber of Commerce and National Association of Manufacturers, 1969). See recommendation (10) on p. 5.

⁷⁴ George W. Taylor, "Public Employment: Strikes or Procedures?" *Industrial and Labor Relations Review*, 20:4 (July 1967).

⁷⁵ Ibid., p. 635.

⁷⁶ George H. Hildebrand, "The Public Sector" in *Frontiers of Collective Bargaining*, eds. John T. Dunlop and Neil W. Chamberlain (New York: Harper & Row, 1967), pp. 125-154.

⁷⁷ Jack Stieber, "Collective Bargaining in the Public Sector" in *Challenges to Collective Bargaining*, An American Assembly Volume, ed. Lloyd Ulman (Englewood Cliffs, N.J.: Prentice-Hall, 1967 a Spectrum Book), pp. 65-88.

⁷⁸ Jean T. McKelvey, "Fact-Finding in Public Employment Disputes: Promise or Illusion," *Industrial and Labor Relations Review*, 22:4, (July 1969).

⁷⁹ Ibid., p. 543.

⁸⁰ Arvid Anderson, "Compulsory Arbitration Under State Statutes" *Proceedings of the New York University Twenty-Second Annual Conference on Labor* (New York: New York University, 1970).

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⁸² J. Joseph Loewenberg, "Compulsory Arbitration for Police and Fire Fighters in Pennsylvania in 1968," *Industrial and Labor Relations Review*, 23:3 (April, 1970).

⁸³ *Work Stoppages in Government, 1958-1968*, BLS Report 348, (Washington: U.S. Department of Labor, 1970).

⁸⁴ 1970 Supplement, p. 2.

⁸⁵ Sheila White, "Work Stoppages of Government Employees," *Monthly Labor Review*, 92:12 (December 1969).

⁸⁶ Robben W. Fleming, "Collective Bargaining Revisited," in *Frontiers of Collective Bargaining*.

⁸⁷ Burton, "Can Public Employees Be Given . . ." p. 478.

⁸⁸ Krinsky, "Avoiding Public Employee Strikes . . ." p. 470-471.

⁸⁹ Theodore W. Kheel "Strikes and Public Employment" *Michigan Law Review*, 67:5, March 1969 p. 941.

⁹⁰ Jack Stieber, "A New Approach to Strikes in Public Employment" in *Challenges to Collective Bargaining*, Proceedings of a Conference, ed. Benjamin C. Sigal (Honolulu: Industrial Relations Center, University of Hawaii, September 1968).

- ⁹¹ Kruger, "Canadian Legislation . . .," pp. 460-461.
- ⁹² Ibid., p. 462.
- ⁹³ Harry H. Wellington and Ralph K. Winter, Jr., *Structuring Collective Bargaining in Public Employment* (Washington: The Brookings Institution, 1970), Reprint 185 from *Yale Law Journal*, 79:5 (April 1970), pp. 805-870.
- ⁹⁴ Ibid., p. 849.
- ⁹⁵ See *ACIR report*, pp. 89-90, and *1970 Supplement*, pp. 46-54.
- ⁹⁶ *1970 Supplement*, p. 49.
- ⁹⁷ Hervey A. Juris and Kay B. Hutchison, "The Legal Status of Municipal Police Employee Organizations," *Industrial and Labor Relations Review*, 23:3, (April 1970).
- ⁹⁸ Wellington and Winter, *Structuring Collective Bargaining . . .*, pp. 852-870.
- ⁹⁹ Ibid., p. 868.
- ¹⁰⁰ Thomas M. Love, "Joint Committees: Their Role in the Development of Teacher Bargaining," *Labor Law Journal*, 20:3, (March 1969).
- ¹⁰¹ Moskow, Lowenberg, and Koziara, *Collective Bargaining in Public Employment*, pp. 245 and 105.
- ¹⁰² *GERR Reference File*, 15:2012.
- ¹⁰³ Myron Lieberman and Michael H. Moskow, *Collective Negotiations for Teachers* (Chicago: Rand McNally and Co., 1966), p. 35.
- ¹⁰⁴ Ibid. See the 346 items in the bibliography on pp. 430-436.
- ¹⁰⁵ Mrs. Fred A. Radke, "Real Significance of Collective Bargaining for Teachers," *Labor Law Journal*, 15:12, (December 1964).
- ¹⁰⁶ Michael H. Moskow and Robert E. Doherty, "United States" in *Teacher Unions and Associations*, ed. Albert A. Blum (Urbana, Illinois: University of Illinois Press, 1969), p. 295.
- ¹⁰⁷ Charles R. Perry and Wesley A. Wildman, *The Impact of Negotiations in Public Education* (Worthington, Ohio: Charles A. Jones Publishing Co., 1970), pp. 11-13.
- ¹⁰⁸ Ibid., p. 13.
- ¹⁰⁹ Don Hellriegel, Wendell French, and Richard B. Peterson, "Collective Negotiations and Teachers: A Behavioral Analysis," *Industrial and Labor Relations Review*, 23:3 (April 1970), p. 381.
- ¹¹⁰ Perry and Wildman, *The Impact of Negotiations . . .*, pp. 1-18.
- ¹¹¹ Lieberman and Moskow, *Collective Negotiations for Teachers*, pp. 35-42.
- ¹¹² Patrick W. Carlton and Harold I. Goodwin, eds., *The Collective Negotiations in Education* (Worthington, Ohio: Charles A. Jones Publishing Co., 1969).
- ¹¹³ Ibid.: James Cass, "Politics and Education in the Sunshine State—The Florida Story"; and Section C, Negotiations in Higher Education. See articles by Harry A. Marmion (American Council on Education), Bertram H. David (AAUP), and Israel Kugler (AFT).
- ¹¹⁴ In, *Teacher Unions and Associations*.
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- ¹¹⁶ Hirschel Kasper, "The Effects of Collective Bargaining on Public School Teachers' Salaries," *Industrial and Labor Relations Review*, 24:1 (October 1970).
- ¹¹⁷ For example, see previous cited works by Wellington and by Love.
- ¹¹⁸ See paragraphs I,B in the 1968 AAUP policy statement on "Representation of Economics Interests," *AAUP Bulletin*, 54:2 (Summer, 1968), pp. 152-154, and paragraph I,B, in the 1969 statement on the same subject in *AAUP Bulletin*, 55:4 (Winter, 1969), pp. 489-491. In the first statement the AAUP states that it "will therefore oppose legislation imposing the principle of exclusive representation. . . ." In its subsequent statement it said instead that it "recognizes the significant role which collective bargaining may play. . . ."
- ¹¹⁹ Charles M. Rehmus, "Collective Bargaining and the Market for Academic Personnel," *Quarterly Review of Economics and Business* (Autumn 1968);

Martha A. Brown, "Collective Bargaining on the Campus: Professors, Associations and Unions," *Labor Law Journal*, 21:3, (March 1970); Joseph W. Garbarino, "Precarious Professors: New Patterns of Representation," *Industrial Relations*, 10:1 (February 1971); Donald H. Wollett, "The Status and Trends of Collective Negotiations for Faculty in Higher Education," *Wisconsin Law Review*, 1971:1, pp. 2-32.

¹²⁰ See "Table 32 Work Stoppages Resulting from Labor-Management Disputes," *Monthly Labor Review* (February 1971) and any monthly issue thereafter.

¹²¹ For example, in 1968, 87 percent of the time lost, occurred in that connection; in 1966, the figure was 80 percent. These and related statistics can be found in the annual BLS pamphlets, *Analysis of Work Stoppages*, 1968, BLS Bulletin 1646 (Washington: U.S. Government Printing Office, 1970) and *Analysis of Work Stoppages 1966*, BLS Bulletin No. 1573 (Washington: U.S. Government Printing Office, 1968).

¹²² BLS Bulletin 1646, p. 4.

¹²³ *Ibid.*, p. 6.

¹²⁴ Arthur Kornhauser, Robert Dubin, and Arthur M. Ross, eds., *Industrial Conflict*, (New York City: McGraw-Hill Book Co., 1954).

¹²⁵ Robert Dubin, "Industrial Conflict: The Power of Prediction," *Industrial and Labor Relations Review*, 18:3, (April 1965), pp. 352-363.

¹²⁶ Arthur M. Ross and Paul T. Hartman, *Changing Patterns of Industrial Conflict* (New York: John Wiley and Sons, 1960).

¹²⁷ *Ibid.*, p. 3.

¹²⁸ *Ibid.*, p. 176.

¹²⁹ Arthur M. Ross, "The Prospects for Industrial Conflict," *Industrial Relations*, 1:1 (October 1961), pp. 54-74.

¹³⁰ John T. Dunlop, "The Function of the Strike," in *Frontiers of Collective Bargaining*, p. 120.

¹³¹ Neil W. Chamberlain, "Strikes in Contemporary Context," *Industrial and Labor Relations Review*, 20:4, (July 1967), p. 602.

¹³² *Ibid.*, p. 616.

¹³³ Orme W. Phelps, "Compulsory Arbitration: Some Perspectives," *Industrial and Labor Relations Review*, 18:1, (October 1964), p. 91.

¹³⁴ Carl M. Stevens, "Is Compulsory Arbitration Compatible with Bargaining," *Industrial Relations*, 5:2 (February 1966), pp. 38-52.

¹³⁵ A. H. Raskin, "Collective Bargaining and the Public Interest," in *Challenges to Collective Bargaining*.

¹³⁶ John T. Dunlop, "The Social Utility of Collective Bargaining," *ibid.*, p. 177.

¹³⁷ George P. Shultz, "Strikes: The Private Stake and the Public Interest," *Selected Papers No. 8*, (Chicago: Graduate School of Business, University of Chicago, n.d.).

¹³⁸ An adaptation of several articles about mediation by William Simkin is included in *Unions, Management and the Public*, eds. E. Wight Bakke, Clark Kerr, and Charles W. Anrod (3d ed.; New York: Harcourt, Brace and World, 1967), pp. 319-323.

¹³⁹ Carl M. Stevens, "Mediation and the Role of the Neutral," in *Frontiers of Collective Bargaining*.

¹⁴⁰ Charles M. Rehmus, "The Mediation of Industrial Conflict: A Note on the Literature," *The Journal of Conflict Resolution*, 9:1, (March 1965), pp. 118-126.

¹⁴¹ The deficiencies of the Railway Labor Act and possible solutions to national emergency strikes are covered in Benjamin Aaron's chapter and are only touched on briefly at this point.

¹⁴² Richard M. Nixon, "Proposal to Congress to Enact the Emergency Public Interest Protection Act of 1970," February 27, 1970.

¹⁴³ Economic issues are covered in the chapter by E. Robert Livernash in the 1970 IRRA research volume, *A Review of Industrial Relations Research*, Vol. 1.

¹⁴⁴ A mimeographed summary of the legislative battle, "Efforts to Repeal 14(b)," by Mary Ann Coghill was published by the Industrial and Labor Relations Library of the Cornell University School of Industrial and Labor Relations in January 1966. A summary of the final fight to bring the issue to a vote can be found in the February 11, 1966 issue of the *New York Times*.

¹⁴⁵ Frederick Meyers, *"Right to Work" in Practice* (New York: Fund for the Republic, 1959).

¹⁴⁶ James W. Kuhn, "Right-to-Work Laws—Symbols or Substance?" *Industrial and Labor Relations Review*, 14:4, (July 1961), pp. 587-594.

¹⁴⁷ Sanford Cohen, "Union Shop Polls: A Solution to the Right to Work Issue," *Industrial and Labor Relations Review*, 12:2 (January 1959), pp. 252-255.

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Industrial Relations in Western Europe and Canada

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For assistance in preparing this paper I am indebted to so many individuals and institutions that I cannot begin to list, let alone do justice to them. To the Canada Council I am indebted for the financial resources that took me on a field trip to Europe and enabled me to hire a research assistant, as well as to bring together other resources.

Without Paul Brennan, a Ph.D. student in the School of Business at the University of Toronto, I could not possibly have completed this article. He not only culled the literature and prepared position papers on the major issues covered, but also added much to the final product through his constructive criticisms of my draftsmanship.

For equally incisive comments I am indebted to Dr. Paul Malles of the Economic Council of Canada, who was originally to co-author the paper, a joint undertaking which our conflicting schedules unfortunately rendered impossible. I am grateful also to a number of European colleagues and to the IRRA's official reviewers, who provided many useful comments on a draft of the paper.

Miss Jean Newman, the librarian in the Centre for Industrial Relations of the University of Toronto, as well as her staff, spent many hours pulling together relevant material in books, articles and every other conceivable form. The Centre's secretary, Miss Marian Stanley, laboured long and hard with correspondence, position papers and, eventually, the final product of these efforts.

I owe much also to those who helped with the arrangements for my European field trip, and especially to those labour, management, and government officials who showed so much patience with me as I tried to gain an appreciation of current developments in their respective institutions and countries.

Despite all this assistance, I must, of course, assume full responsibility for the sins of omission and commission with which this article may be replete.

Introduction

This essay reviews a number of significant developments in Western European and Canadian industrial relations over the past decade. The breadth of coverage of the study helps to explain its limitations, some of which are also reflections of the research methodology employed.

APPROACH TO THE STUDY

The challenge in this paper has been to discern an analytical framework within which to organize the available material in an intelligible manner. In an endeavour to develop such a framework, several major issues have been delineated that serve to bring out the conflicting centralizing and decentralizing forces which are at work within the various national industrial relations systems covered by this review. The significance of these competing pressures comes to the fore repeatedly throughout the essay, and is highlighted in the conclusion.

The nature of the areas singled out for general assessment determined the countries in Western Europe that received the greatest attention. For the most part, detailed analysis was confined to the following countries: Britain, Holland, Sweden, West Germany, and Belgium. By comparison, recent industrial relations developments in such countries as France, Italy, Spain, Denmark, and Norway¹ have been neglected. Moreover, even with respect to the countries that were subject to more exhaustive examination, more analysis was devoted to some questions than to others. The net result can perhaps best be described as a survey of a limited range of issues in a selected number of countries.

Only in terms of the literature pertaining to these countries can a more comprehensive claim be made. Here again, however, the study is vulnerable to criticism, because it is based almost exclusively on publications in the English language. Although the flow of such materials is steadily increasing,² it still tends to suffer from a serious lag, which outdates much of it before it finds its way into print, a fate that doubtless awaits this survey also. Fortunately, this rate of obsolescence is less prevalent among the growing number of studies emanating from such international bodies as the Internation-

al Labour Organization (ILO) and the Organization for Economic Cooperation and Development (OECD)³ than it is in the case of learned journal articles, but it is still difficult to keep abreast of the latest developments by reference to the English language literature alone.

Both to overcome this disadvantage and to ascertain the validity of much that has been written, field interviews were arranged during the summer of 1970 with leading trade union, management, and government officials in most of the aforementioned countries. Consequently, the study embodies substantially more than a resume of the available literature, most of which is referred to only in footnotes. Indeed, at many points the essay draws more heavily on material garnered from the field trip than from written sources.

OUTLINE OF THE STUDY

As suggested above, the essay is divided into several distinct parts. The first deals with the legal structure for the conduct of union-management relations, and, after outlining some of the major contrasts between Western Europe and North America in this area, concentrates on the on-going controversy within Britain and Canada with respect to possible changes in the nature of their statutory frameworks. The second section explores several of the advantages and disadvantages of centralized collective bargaining systems, with particular reference to countries in Europe that are experiencing difficulties with their present systems. The third part offers a similar assessment of the record of so-called incomes policies in various countries. In the next section the nature and outlook for a number of possible forms of industrial democracy are examined. This is followed by a brief and somewhat speculative section dealing with the trade union response to the multinational corporation. Finally, a few neglected areas are highlighted, and some directions for future research are suggested.

The Legal Framework for the Conduct of Union-Management Relations

Before turning to the continuing debate concerning industrial relations legislation in Britain and Canada, it is well to be aware of the general contrasts between the West European and the North

American approaches to the regulation of the collective bargaining process. Knowledge of these differences, as well as of their implications, will help to set the stage for what follows in this and later parts of the paper.

WEST EUROPEAN AND NORTH AMERICAN CONTRASTS.⁴

Generalizations are difficult in this area because each country's industrial relations system is a product of its own unique combination of traditions, values, and institutions. In a number of ways, therefore, there are as many differences among the various West European countries, and between the United States and Canada, as there are features that distinguish one set of countries from the other. As a case in point, one need only cite the role of the strike or lockout, which tends to come into play under different conditions, and at different points in the collective bargaining process, in each of the countries examined. Nonetheless, there are some broad distinctions between the regulation of industrial relations on the two sides of the ocean.

The most outstanding of these differences is in the degree of legislative regulation itself. Whereas most Western European countries have introduced relatively little statutory control over the collective bargaining process, both the United States and Canada have enacted increasingly comprehensive "rules of the game" over the past few decades. North America's comparatively high incidence of state regulation, in turn, has given rise to several other distinguishing features, not the least of which relates to the matter of union recognition. The North American practice of granting exclusive negotiating rights within appropriate bargaining units to individual unions, on the basis of majority employee support, is virtually unknown in Western Europe. As a result, aside from the Scandinavian countries, West Germany, and a few other cases, voluntarily accepted multi-union representation is widespread, and sole bargaining agents are the exception rather than the rule. Noteworthy, too, is the fact that where multiple unionism is common in Western Europe, apart from Britain the divisions are normally found along ideological, political, and religious lines, rather than on an industry, trade or craft basis.

Instead of the balkanized disarray that Western European union

multiplicity might be expected to produce, it is surprising how much more centralization their bargaining systems display, at least on the surface. In part this seeming paradox can be traced to the more centralized nature of the federated employee and employer organizations in Western Europe, divided though they may be at the national level along philosophic lines. The prevalence of more industry-wide bargaining in Europe can also in part be traced historically in some countries, to a concept that is virtually unknown in North America, except in the Province of Quebec. This is the practice, albeit a diminishing one, of extending some or all of the basic conditions, negotiated regionally or nationally by representative groups in an industry, to all firms and employees in the industry, whether unionized or not.

Regardless of the motivations for industry-wide negotiations in Western Europe, they are seldom as meaningful as they seem on paper. This is because industry-bargained regional or national rates have become little more than the minimum rates, in many, if not most, cases, especially at the basic or common labour levels. Over and above these minima, the phenomenon known as wage drift has given rise, both formally and informally, to further concessions at the firm, plant, and even individual levels, the cumulative effect of which can be to raise actual earnings well above the negotiated rates.⁵ As a result, there are in fact less marked differences than appear at first glance between the final product achieved by the outwardly more centralized bargaining systems in Western Europe and those of the apparently more decentralized North American pattern.

Another distinguishing feature about Western European and North American labour relations is to be found at the local factory or branch level. In North America, the local union is the dominant force representing workers in a plant. In most of Western Europe there is no real equivalent to the local union, at least in substance, although there sometimes is in form. Instead, there are elected plant-wide works, or workers', councils, whose composition, function, and status vary widely.⁶ Established by law or agreement as part of the European effort both to introduce more democracy into industry and to complement their centralized bargaining arrange-

ments, these councils relate in a variety of ways to the parallel union hierarchies. Although often dominated by elected slates of unionized workers, and sometimes serving some of the same purposes as a local union, there is, as indicated later, nothing quite akin to these councils in North America.

One could allude, of course, to many other contrasts between the statutory regulation of the Western European and North American industrial relations systems. For example, although Western Europe has avoided detailed regulation of the collective bargaining process, it has a much longer tradition of employing relatively comprehensive industrial standards legislation to protect individual workers on the job.⁷ To administer these labour codes, the countries involved have created a variety of labour courts, each with a propensity to develop a plethora of case law governing different facets of the relationship between the individual employers and employees.⁸ Distinct, therefore, from the general North American reliance on fairly elaborate grievance and arbitration procedures to handle disputes arising during the life of a collective agreement, is the greater emphasis in Western Europe on labour courts acting on the basis of the existing case law, where more informal mechanisms at the plant level do not resolve problems covered by the industrial standards legislation. This contrast brings out still another way of differentiating between the Western European and North American collective bargaining systems. In the absence of comprehensive labour codes, the scope for negotiations in the latter tends to be wider and deeper than in the former.

In the discussion immediately following, the most fundamental distinction to be borne in mind, between Western European and North American labour relations, relates to the proclivity in the United States and Canada to resort to ever more detailed state regulation of the collective bargaining process. In this comparative context, it is intriguing to find Britain moving towards a more North American approach, thereby indicating that it could become an important exception to the Western European pattern. Meanwhile, Canada is regulating the collective bargaining process through even more state intervention than that prevailing only a few years ago.

THE DONOVAN REPORT IN BRITAIN.⁹

The continuing state of ferment in British industrial relations has shaken the complacency that, until recently, might be said to have characterized those closest to the situation. The country is now alive with controversy about the state of its industrial relations and, more particularly, about the appropriate nature of the legislative framework governing the conduct of those relations. Providing an initial focal point for this debate was the Report of the Donovan Commission. The briefs,¹⁰ publications,¹¹ and reactions¹² generated by the Donovan Commission have brought into sharp focus some of the long-standing shortcomings of the British industrial relations system, and the various possible ways in which these deficiencies might be overcome. Not surprisingly, however, both the diagnosis and the prescription remain contentious.

An appropriate diagnosis is elusive because of the difficulties involved in distinguishing between the superficial symptoms and underlying causes. One of the most obvious signs of trouble has been the high incidence of unconstitutional and/or unofficial strikes at the plant and workshop levels. According to British usage, unconstitutional strikes are those that take place in violation of agreed dispute-settlement procedures, while unofficial strikes occur without union sanction, if not in open defiance of the union leadership. Very often, of course, strikes in Britain are both unconstitutional and unofficial. Although seldom illegal and often short-lived, both types of strikes have been numerous and disruptive. Nonetheless, even the significance of this disquieting feature of British industrial relations (such strikes account for about 90 per cent of time lost due to labour disputes) has been minimized by some observers, who, while they point out that such walkouts are largely confined to longshoring, shipbuilding and automobile manufacturing, seem to be neglecting the hidden costs of such activities in their calculations.¹³ As in the case of jurisdictional disputes in the construction industry in North America, there must be added to the direct costs of the lost time involved the indirect costs of both the related harassment and the work rule and related concessions made to avoid such holdups.

Equally familiar to the student of British Industrial relations

has been the prevalence of wage drift, especially in the engineering industries. The postwar spread of this phenomenon (long a potential threat held back by slack in the economy) has been largely an outgrowth of full employment, which strengthened the shop steward's bargaining power by lessening management's will to resist, because of manpower recruitment and retention problems. The result has been an incredible accumulation of anomalies and inequities in the over-all wage structure, as groups with varying degrees of economic muscle have vied with each other, as much as with management, to improve their relative positions in the income hierarchy.

The Donovan Commission's diagnosis of the basis for these and other manifestations of difficulty in the British industrial relations system was couched in terms of the discrepancy between theory and practice. The Commission stressed the now famous dichotomy between Britain's two systems of industrial relations. The formal system embodies the bargaining that takes place nationally, within various industries, between the appropriate employers' federations and national unions. At this level, the Commission argued that only certain broad and essentially minimum terms and conditions of employment are normally negotiated. The results, according to this line of reasoning, leave considerable scope for the informal bargaining that occurs at the plant or workshop levels, between local managers and foremen and the shop stewards' movement, especially when there is full employment. This type of bargaining has become increasingly influential, and yet lies quite beyond the control of the national organizations participating in the industry-wide negotiations. Hence the high incidence of unconstitutional and/or unofficial strikes, and the existence of so many pay anomalies and inequities.

Criticism of the Donovan Commission's general diagnosis has ranged from the view that it gives a distorted impression of the over-all situation – because it draws too heavily on experience in the engineering industries – to concern about whether it really gets to the root of the problem. One popular notion is that the heart of the matter is the excessive power of unions and their leaders,¹⁴ although this view is hardly consistent with their seeming inability to cope with the challenge posed by the shop stewards' movement.

Dealing more with the substance of the problem is the following extract from a most perceptive and penetrating analysis of the British situation, which, with some modification, could be made applicable to many other countries as well:

. . . Our contention is that the present condition of industrial relations in Britain is better characterized as a proliferation of unrelated normative systems each resting on only a small area of agreement in place of more closely integrated systems covering much larger areas, and that the overall effect is equivalent to a progressive breakdown of social regulation. How and why had this come about?

Analysis must begin with the transformation of power relations within factories and companies that has resulted from full employment over much of the economy for much of the postwar period. This ground was amply covered in the Donovan Report. In the theoretical terms we are using, the interaction between power and aspirations has given a vigorous stimulus to demands from the shop floor, and the ferment has been intensified by the accelerating pace of technological, organizational and social change. Norms have come under constant pressure for revision and emergent aspirations have revealed major gaps in normative systems by bringing into existence new issues and problems for which no regulation yet exists. Two kinds of consequence have followed. Work groups capable of mobilizing the necessary power have broken through a relatively larger area of regulation and imposed a relatively smaller one more favourable to themselves. And when faced with gaps in the normative system in respect of certain of their aspirations, groups with sufficient power have introduced their own. In both situations the revision and creation of norms has been improvised and piecemeal, has rested on a very small area of agreement, and has not been related to larger units of regulation. This splintering of the normative order within the establishment and the piecemeal, hotch-potch additions to it, all determined by the accidents of power distribution rather than by agreed principles of any sort, has greatly increased the probability of disorder and loss of control within establishment and enterprise boundaries.

But the effects have extended far beyond those bound-

aries, and on these the Donovan Report touched but lightly. Order rests as much on relations between establishments, occupations, and industries as within them. Here the same forces have been at work destroying customary relations and creating new situations where no defined and accepted relations exist at all. The problem, as has been argued elsewhere, is one of unrestrained competition promoting and promoted by inflation, but competition of three kinds: economic, political and social. Employers have engaged in economic competition for labour in short supply by bidding up earnings above agreed rates, thus disrupting such exiguous normative relations as may have previously existed between establishments, occupations and industries. The political relations between unions have also obliged them to compete for success by out-bidding each other in seeking to revise the norms regulating their members' wages and conditions. The third form of social competition has resulted from the conflicting values held by different groups of employees, which influence their views on the relative worth of their services or the fairness of their pay compared with other groups, and consequently their pressures on employers and unions.¹⁵

As was to be expected, the Donovan Commission's prescription has given rise to more controversy than its diagnosis, even though the one is a reasonably logical outgrowth of the other. Reflecting its view that the most meaningful negotiations were taking place at the firm and plant levels, the major thrust of the Commission's recommendations was to place the formal as well as the informal emphasis at those levels. To bring about this decentralization, the Commission, among other things called for the following: more comprehensive substantive and more viable procedural agreements at the firm and plant levels; managerial initiatives leading in this direction, to be facilitated by the upgrading of its personnel and industrial relations functions; and union cooperation in this over-all realignment of the collective bargaining process. To encourage these and other proposed changes by voluntary rather than compulsory means, the Commission called for the formation of a Commission on Industrial Relations, to which troublesome cases could be referred for study and advice. Almost no compulsion

was envisaged, on the grounds that voluntary acceptance of any significant reforms was essential if they were to prove worthwhile. Similarly, only limited enforcement of agreements was envisaged, because of the vague state of so many of them, whether substantive or procedural in nature.

Initially, opposition to the over-all tenor of these recommendations came primarily from a few academics,¹⁶ a number of editorialists,¹⁷ and the Conservative Party.¹⁸ In their first reactions, both labour and management cautiously approved the general approach of the Report, and particularly its emphasis on voluntarism.¹⁹ Since then, management has taken a harder line in favour of more statutory and administrative control,²⁰ while labour (as successive governments have attempted to introduce more drastic legislative changes) has become an even more ardent supporter of the Donovan approach.

On the academic side, B. C. Roberts has perhaps been the most vocal critic. His position has been that much more radical changes are required to reform the British industrial relations system. Essentially, he has been an advocate of a much more North American approach to the regulation of collective bargaining. Among other things he has promoted are North American-type certification procedures, and binding fixed-term agreements, during the life of which arbitration would replace economic sanctions as a means of resolving disputes.

As for political and governmental reaction to the Donovan Report, it is interesting to note that even the then Labour Government felt that the Commission had not gone far enough.²¹ Nonetheless, although the Labour Government almost immediately established the proposed Commission on Industrial Relations, it was forced to backtrack on its other reform policies because of the intransigence both of the Trade Union Congress, which pledged to introduce some reforms on its own,²² and of its own left-wing backbenchers. This opposition stemmed not only from the proposed penal provisions in the draft legislation but also from two other proposals, which went beyond the Commission's recommendations to provide for discretionary authority in the hands of the Government: first, to order a 28-day "conciliation pause" in the

case of unofficial strikes, and second, to call for a strike vote in the case of official strikes posing a serious threat to the country.

Before the Conservatives took office, they were already on record as favouring a much more comprehensive regulatory framework.²³ In keeping with their earlier position, they first issued a consultative document,²⁴ and soon thereafter a draft bill embodying their thinking. Besides allowing for conciliation pauses in the case of unofficial strikes, and strike votes in the case of official strikes, the legislation provides, among other things, both for the enforceability of collective agreements, except where the parties agree to the contrary, and for substantial fines against unions whose members violate the law. As expected, the Government's position provoked strong opposition from both the Labour Party and the labour movement. Apparently confident that it has public opinion behind it, the Government has pressed ahead with its new approach to the regulation of industrial relations in Britain, despite major protest strikes and demonstrations. It now seems probable that the new legislation will come into force in the summer of 1971. At what costs and with what results are matters for conjecture.

THE RAND AND WOODS REPORTS IN CANADA.²⁵

Various jurisdictions in Canada are also in the process of exploring whether further legal enactments can improve the nature of their industrial relations systems. Analysis of the Canadian situation is complicated by the decentralized nature of its constitution, as it applies to the field of industrial relations. Between 90 and 95 per cent of Canada's labour relations come under provincial jurisdiction, making it most difficult to generalize about current developments.

The picture is further complicated by the number of inquiries that the two levels of government have launched over the past few years.²⁶ Probably the most noteworthy of these are the Rand Commission, in Ontario, and the Prime Minister's Task Force on Labour Relations, at the federal level. Although many briefs, considerable research, and much heated reaction were occasioned by these and other inquiries,²⁷ the practical impact has been quite minimal to date. In the case of the Rand Report, for example, the most radical proposal was for a special tribunal which, after

a strike or lockout had lasted some time, would have the power to alter fairly drastically some of the Report's proposed and rather complex rules pertaining to strikers and their possible replacements, as an inducement to the parties to resolve their differences or submit them to arbitration. Although the essence of this proposal has not been enacted into law, it does help to explain a seemingly unrelated change in the Ontario Labour Relations Act, allowing individual strikers to reclaim their jobs within six months of the commencement of a legal walkout, provided their employer still has work available that they are competent to perform. These and certain other recent amendments to various statutes, together with the virtual elimination of *ex parte* injunctions in labour disputes in Ontario, are designed to reduce the emotional overtones that have characterized several recent disputes in the Province, where weak unions have been mauled by small but relatively stronger employers.

It remains to be seen how much influence the Task Force Report will have on the federal government's long-heralded amendments to the Industrial Relations Disputes Investigation Act; but what information is available suggests that few of its major proposals will be enacted. Among other changes, these proposals called for a general bill of rights for union members; widened union accountability, before various tribunals more appropriate to the purpose than the courts; a comprehensive picketing and boycotting code; an independent Public Interest Disputes Commission, to assist in improving sick industrial relations situations and, on request, to advise the government on how best to handle potential or actual disputes likely to jeopardize the public health, welfare and safety; and a reconstituted Canada Labour Relations Board, with more jurisdiction, discretion, and authority, and with broader enforcement powers, similar to those of the National Labour Relations Board in the United States.

Although the Task Force Report was well received by some academics,²⁸ it was roundly criticized by labour, management and government officials, albeit for different reasons. Labour directed most of its criticisms against the proposed bill of rights for union members, which it argued would constitute an unwarranted intervention into the internal affairs of the unions.²⁹ Management con-

demned the Report for proposals it said would aggravate the alleged imbalance of power in favour of labour, particularly by suggesting that the law permit some secondary picketing, and by endorsing the new approach to public service bargaining at the federal level, which allows groups of workers to opt for the right to strike.³⁰ The government's hostile reaction has never really been explained, but may in large measure be attributable to fear on the part of the Federal Department of Labour that the proposed Public Interest Disputes Commission would reduce its role, status, and prestige.

As a member of the Task Force, the author can perhaps be forgiven the somewhat cynical satisfaction he has derived from this more or less universal condemnation of the Report by those with strong vested interests in the status quo. If nothing else, this mutually reinforcing exercise in selective criticism suggests that, despite all their protestations about shortcomings in Canada's current public policies in the field of labour relations, union and management are both loath to see any wholesale revisions, since they cannot be sure of the net effect of such changes. Undoubtedly this common anxiety reflects a feeling that governments are more interested in achieving a satisfactory political balance among the major power blocs—that is, in this case, between labour and management—than with any overriding concept of the public interest. Given the stakes involved, one can readily appreciate why both union and management might well prefer to deal with the devil they know than with the one they do not.

Nonetheless, despite their general reticence, some governments in Canada have been forced to move in certain areas of the Canadian industrial relations system in which the situation had deteriorated to the point where some action had to be taken. Construction labour relations provide the major case in point.³¹ Across Canada, and indeed in the United States as well, there is no sector of the collective bargaining system that is currently giving rise to more difficulties. Plagued by jurisdictional disputes, short illegal strikes, protracted legal stoppages, and runaway settlements, the unionized sector of the industry has displayed such an obvious imbalance of power in favour of labour that several provincial governments in Canada have felt compelled to enact special remedial legislation. British Columbia and Saskatchewan chose to deal primarily with

the symptoms of the problem, when they imposed a form of mediation-to-arbitration on the parties involved in two recent and prolonged disputes within their jurisdictions. At a more fundamental level, Ontario has just introduced an accreditation procedure, which will permit unionized contractors to band together collectively, much as workers do in certified unions, for collective bargaining purposes.³² Since these new procedures will not force individual contractors in accredited associations to respect a collective decision to take a strike or call a lockout, the changes probably do not go far enough to rectify the imbalance of power that exists in the industry. Nonetheless, as in the case of British Columbia and Alberta, where even less potent measures along the same lines have also recently been enacted, these moves do at least indicate a willingness to attempt to come to grips with the basis of the problem.

Quebec has gone much further, both in this and other areas, because of the additional difficulties it faces as a result of rival unionism.³³ In construction, the government has statutorily decreed multi-trade bargaining by region between the two major federations of labour and three designated contractors associations.³⁴ Almost immediately, this new system of bargaining within the industry gave rise to a union claim for wage parity across the Province. This led to a rapidly spreading strike, which Quebec's National Assembly ended by first ordering a return to work and then imposing a series of settlements on the parties, whose relations remain strained. On the more general plane, Quebec has also introduced a special non-partisan labour court to handle unfair labour practices and other matters normally dealt with by labour relations boards or the courts, in North America, with the notable exception of certification procedures, which are to be administered by the Provincial Department of Labour and Manpower. These, and other proposed changes designed to induce a move towards more sectoral or industry-wide bargaining in the Province, suggest that Quebec industrial relations will continue to represent a unique combination of European and American practices.

At least one other legislative development in Canada is worthy of note. Collective bargaining, including the right to strike, has recently been introduced into the public service of Canada, as well as into many provincial jurisdictions.³⁵ Particularly interest-

ing has been the experience under the Federal Public Service Staff Relations Act, which allows duly certified groups to opt for the right to strike, or for arbitration, in their relations with the Government of Canada. Although it is still too early to draw firm conclusions from this experience, it can be said that in spite of the public annoyance aroused by one or two of the major strikes that have occurred, the system is holding up quite well in relation to the general state of industrial relations in Canada.

THE ROLE OF LAW IN THE REFORM OF LABOUR RELATIONS.

To conclude this part of the paper, it is appropriate to return to an earlier question. Can basic changes be brought about in the conduct of union-management relations through legislation? In Britain, the government seems determined to find out, but it will take years to assess the results. A degree of scepticism is in order, however, if only because the doctrine of abstention has prevailed too long in Britain for it to be surrendered lightly by those who have benefited most from it. Because of long-standing and deeply-imbbed contrary policies and practices, the goals of contract inviolability and union accountability will likely remain elusive. Some of the problems are very practical. Take the matter of ensuring compliance with collective agreements, be they substantive or procedural in nature. This is surely a forlorn hope as long as these agreements take the imprecise form that most of them still do today. Yet change in this regard will not come easily and will take considerable time, if one can judge from the experience of those relatively few firms in Britain that have successfully made the transition from fairly broad, vague and unenforceable agreements to more specific, precise and enforceable ones. Assuming this to be a desirable objective, about all one may be able to accomplish through state intervention is facilitation of the process by removing any statutory or administrative obstacles and by introducing every possible inducement.

In Canada, the answer to the question could be quite different. Because of North America's by now fairly well-established acceptance of detailed statutory regulation of the collective bargaining process, desired changes can probably be brought about more readily through modifications in public policy. There is obviously

a limit to this possibility, however, a limit that no doubt varies with the stakes involved. A difficult test case will be the construction industry, where, as indicated earlier, various jurisdictions in Canada are attempting, through legislative and administrative revisions, to transform what at times verges on the chaotic into something more stable and in keeping with the rest of the Canadian industrial relations system. In view of the many problems that contribute to the past labour relations record of this industry,³⁶ it will be something of a minor miracle if it can be normalized through statutory intervention. If it can, with or without other more general reforms in the industry, then the potential role of legislative amendments, as a means of improving labour relations in other sectors of the economy, could be much enhanced.

Centralized Bargaining: Problems and Prospects³⁷

Varying degrees of centralization are possible in collective bargaining. In the United States and Canada the most centralized bargaining structures are to be found in those few sectors of the economy where negotiations are industry-wide. Even then the bargaining may be industry-wide only on a union-by-union basis. Generally speaking, collective bargaining in North America takes place at the firm or plant level, although the role of pattern-setting and pattern-following makes the over-all process less disparate than this basic characteristic might suggest.

In Western Europe, there is a wide profusion of bargaining arrangements. As already indicated, the problem in most cases is to distinguish between form and substance. In some countries there is a limited degree of national bargaining. In Sweden, for example, the so-called "framework agreement" between the Swedish Employers' Confederation (SAF) and the largely blue-collar Confederation of Swedish Trade Unions (LO) results in a set of recommendations for the ensuing industry-by-industry bargaining.³⁸ These negotiations are expected to take place more or less within the framework agreement. In Belgium, in the name of "social programming," the National Joint Council of Labour apparently has a major role in determining when new social security programs are to be introduced. Where possible, such programs are supposed to be implemented on an across-the-board basis with due allowance

being made for the costs and benefits involved in ensuing negotiations in the joint "parity commissions," which have been set up in all major sectors of the economy.³⁹

On the surface, the most common form of bargaining in Western Europe is to be found at the industry-wide level, where negotiations may take place on a regional or national basis. Both in Britain and on the continent, these types of arrangements have a long history. In some cases, as previously noted, they are buttressed by special measures providing for the extension of collectively-bargained terms and conditions of work to non-union as well as to unionized enterprises. In practice, however, the provisions resulting from these industry-wide arrangements have become little more than basic minimum floors in most cases. Holland was one of the last countries to maintain the fiction that actual rates of pay were determined by industry-wide negotiations. Yet today, even in Holland, it is an accepted fact of life that the nationally-bargained rates are at best only minimal.⁴⁰

Because of the tendency of rates negotiated on an industry-wide basis in Western Europe to reflect the ability to pay of the less productive firms, a variety of supplementary bargaining arrangements have become more prevalent at the firm and plant levels. Inherently, there has always been a need at these levels for some sort of institution to assist in the interpretation and application of the appropriate national or regional agreement. In the absence of anything like the North American local union structure, this role fell almost by default, in most of the continental countries, to the joint works councils or, failing that, to separate and distinct workers' delegations or work force committees. As such bodies assumed more importance, both in local supplemental negotiations, and as part of the effort to introduce more industrial democracy at the shop level, the unions began to take a more active interest in them, and, with general success, to promote slates of their members for election to them. Once elected, however, these members have often shown an independent streak. In this respect they have much in common with the British shop stewards' movement, although the latter has in fact assumed more outright bargaining rights at the local level. As in Britain, the result on the continent has been a more fragmented system of bargaining than appears on the surface.

Aside from the impact of such general variables as the so-called generation gap, two related phenomena stand out in any attempt to explain recent pressures leading to a further undermining of the traditional systems of centralized bargaining in Western Europe. The first, and until recently most significant, factor has been the prevalence of what by North American standards can only be described as over-full employment in most of the countries in question. Aggravated in many cases by slow growth or actual declines in their labour forces, the resulting tautness in the labour market gave rise to competitive pressures among employers, who began to bid against each other to attract and hold the available manpower. Whether termed "black wages," as in some countries where the national rates were intended to be the actual rates, or "wage drift," where the national rates were accepted as minima, the effect was the same. As employer solidarity gave way to intense rivalry for labour, workers in increasing numbers found themselves enjoying wages well above the negotiated national rates. Added to whatever misgivings workers may already have had about the growing involvement of their union leaders in quasi-public economic and social planning bodies,⁴¹ this growing disparity between actual and negotiated rates doubtless contributed to a weakening of confidence in the existing collective bargaining systems. Against this background, it becomes much easier to explain the emergence of signs of a second and potentially more damaging threat to these systems.

The most serious long-term danger may now lie in the potential breakdown of solidarity on the union side.⁴² Solidarity in the Western European labour movements has traditionally meant more than it has among their North American counterparts. In the United States and Canada, aside from respecting each other's picket lines, union solidarity has been largely confined to the provision of financial and moral support by unions to other unions when they are involved in strikes or lockouts. With few exceptions, it is only within individual unions that there has been a conscious policy of accepting less in the top brackets in order to gain more for those at the bottom of the wage scale. Although it is easy to exaggerate the difference, there has been more emphasis on this approach among, as well as within, unions in most Western European countries, especially where there has been any sort of national

framework bargaining. The point is that whatever distinction there has been in this area may now be on the wane. As a result, Western European labour movements could find themselves driven towards the same position as that of their counterparts in North America, where it is virtually every union for itself, in keeping with the best, or the worst, capitalist tradition, depending on one's point of view.

The symptoms of this trend in Western Europe are not yet such as to suggest an imminent breakdown in their present bargaining arrangements. Nonetheless, the signs of trouble are very real in most of these countries; and, unless a halt is called to the process, the precedents that have already been set, by some powerful groups that have found it pays to defy the established procedures, could become the rule. Both union and management seem well aware of the problem and determined to come to grips with it. There are serious difficulties involved, however, as recent Swedish experience illustrates. Although a relatively tight-knit and powerful employers' confederation, SAF recently could not keep its members in line when they were threatened, or actually hit, by strikes in violation of the over-all peace obligation that formed part of the national framework agreement then in effect. A number of enterprises chose to cave in and concede the union or worker demands rather than stand firm and seek legal recourse, even though in doing so they would have qualified for substantial financial aid from SAF's central strike fund. Somewhat similar examples can be found in many Western European countries.

One of the keys to the viability of any centralized bargaining system clearly lies in the self-reinforcing maintenance of solidarity on both sides of the relationship. If not checked, cracks in either side can set in motion forces capable of undermining the entire system. Because of their political complexion, individual unions and their federations are more vulnerable to internal pressure group tactics than are their opposite numbers, whom they must count on to discipline any of their number who break ranks. Such discipline is only likely to prevail as long as there is a reasonable amount of solidarity on the employer side. When that solidarity is threatened, the whole system is vulnerable. And that is precisely what has happened recently in Western Europe. Because over-full employ-

ment persisted so long, employer solidarity was breached, as firms scrambled for the available manpower. This set the stage for the latent sources of opposition to solidarity within the union ranks, which took full advantage of the vulnerability of both sides to their pressure tactics.

In their attempts to meet the challenge, top level union and management in many Western European countries are considering somewhat less centralized bargaining arrangements. As indicated earlier, Britain is attempting to move towards more company-level bargaining. Although this approach is not unknown on the continent, the hope in most countries is that they can retain centralized control over most issues at the industry-wide level, while decentralizing decision-making in areas where the pressures to do so are too strong to resist. In this context, some interesting contrasts are emerging. In the same industry in various countries, discussions are revolving around different permutations and combinations of industry-wide and firm or plant level negotiations. In one case there was a determination to retain central control over wages while allowing for more negotiating discretion with respect to fringe benefits, working conditions and work rules further down the line. In another country, in the same industry, the parties were contemplating just the reverse, an alternative more in keeping with general thinking in Western Europe on this question.

However it comes out, a number of adjustments seem inevitable in the present Western European collective bargaining systems. In the course of bringing form more into line with substance, these adjustments will also probably reduce both the apparent and the actual distinctions between the Western European and the North American collective bargaining systems, irrespective of remaining differences in their legal trappings. Whether this is advantageous from Western Europe's point of view remains to be seen. It will have the potential advantage in some countries of loosening their negotiating procedures to some extent. Operating on a highly centralized level – almost, it might be said, on the basis of a balance of economic terror – some European collective bargaining systems have become too tight to allow any meaningful outlet for pent-up tensions, except in the form of wildcat strikes. Some decentralization is probably in order, if only to ensure relatively small groups

enough flexibility to let off steam occasionally without jeopardizing the entire system.

Against this and other potential benefits, however, must be set the risks inherent in any movement in the direction of the North American free-for-all type of collective bargaining. In the first place, any further moves towards more fragmented bargaining could easily set in motion forces leading to still more fragmentation. Another significant consideration relates to the employer side. Particularly in Sweden, but also to a lesser extent in several other countries, one of the major advantages employers have derived from industry-wide negotiations has been the so-called "peace obligation," which is supposed to apply at lower levels in the union-management relationship.⁴³ To the extent that this obligation has been, and is further, undercut, so also is the employers' incentive to continue to participate in any kind of centralized bargaining arrangement. Also to be considered is the possible effect of decentralizing the collective bargaining system on the outlook for incomes policies of one kind or another, the subject of the next section of this essay.

The Record of Incomes Policies ⁴⁴

Many developments have occurred since a special study group on inflation, for the Organization for European Economic Cooperation, extolled the virtues of incomes policies in general, and of the Dutch experience with such a policy, in particular.⁴⁵ Notions have changed about what incomes or stabilization policies entail, and, no matter how defined, such policies have in practice achieved less than was expected of them. As one prominent European student of industrial relations put it in an interview, "Incomes policies are in a state of shambles in Europe."

As for the meaning of these policies, organized labour must be given much of the credit for the shift in emphasis that has taken place. Initially, incomes policies were both professionally and popularly construed primarily as a means of maintaining reasonable price stability by keeping wage increases in general line with productivity advances. Today, in contrast, one finds just about as many definitions of incomes policies as there are policies. Related to their potential part in curbing inflation is their role in improving the so-called trade-off between the goals of reasonable price stability

and reasonably full employment.⁴⁶ Beyond these more or less conventional purposes, incomes policies have more recently been called upon to help realize other economic and social goals. Some envisage them as an appropriate vehicle for the redistribution of income in a more equitable fashion.⁴⁷ Others argue that such policies can be employed to facilitate the accumulation of capital, especially in the hands of workers.⁴⁸

In their original and narrower role, incomes policies were virtually predestined to failure. In some countries, the wonder of it all is that labour submitted to such one-sided restraint for so long after the end of the postwar reconstruction period. Easier to comprehend are the explosive consequences that ensued when labour's patience ran out. Holland provides an excellent case in point, especially in view of the favourable foreign attention its purportedly comprehensive incomes policy received.⁴⁹ In fact, although for a time the Dutch concept of an incomes policy provided for rent and price controls, these were employed only selectively, and the policy was geared primarily to the promotion of wage restraint. In this sense, it was, and still is, more of a wages than an incomes policy. At first the mechanics of the system were relatively simple. On the basis of advice from the Foundation of Labour, a joint labour-management body, the government issued "guidelines" to the Board of Government Mediators, its watchdog in the field of collective bargaining. Negotiated agreements were supposed to be approved by this Board, which normally would not accept any contract that breached the guidelines. After 1959 the government introduced a new approach, allowing for more differentiation in wage increases in accordance with relative productivity movements in different sectors of the economy. Shortly thereafter, the responsibilities of the Board of Mediators were transferred to the Foundation of Labour, which became deadlocked so often that it was unable to carry out its new obligations, which reverted back, under certain circumstances, to the Board of Mediators. All the while, pressure was building up for the seemingly inevitable wage explosion of the mid-sixties. After some further and largely futile reshuffling of responsibilities, the government bowed to the Labour Foundation's demand that the wage-determining process be left to collective bargaining. This concession was made subject to two major qualifications: one in-

volving the tripartite Social and Economic Council, which semi-annually, for general guidance, was to publish what it deemed appropriate limits for proposed wage increases; the other, a controversial reserve power in the hands of the government, allowing it to roll back any wage increase which it decided was contrary to the public interest.⁵⁰ This power has never been exercised, and there is considerable doubt about its efficacy. Indeed, reaction to the very existence of such a power was so hostile on the labour side that two out of the three major union federations withdrew, in protest, from any participation in the aforementioned Social and Economic Council's semi-annual reports. They subsequently returned to this aspect of the Council's work, to join with the employers in warning the government against either wage or price restraints. However, in the face of one of the highest rates of inflation in Western Europe, both the government and a majority in parliament chose not to heed this advice. Instead, a temporary ceiling has been placed on wage increases, and prices have been brought under greater government scrutiny and control. Apparently, therefore, the strange adventures of Dutch wage policy are not over.

Britain is another country that has tried a variety of incomes and wages policies since the War, as part of its overall stabilization program.⁵¹ Having gone through everything from wage freezes, pay pauses, and nil norms to productivity bargaining, Britain offers something of a laboratory for those interested in testing the usefulness of various types of approaches to an incomes policy. In the short run, at least, the British record seems to suggest that the shock effect of a general wage and price freeze can be most salutary. The aftermath, however, as is apparent in the case of all manner of unsustainable formal incomes restraints, is something else again. Britain has thus had an inter-related succession of both maxi- and mini-income restraints and explosions since the War. Perhaps of greater long-term significance has been her experience with productivity bargaining, under which more generous wage and salary concessions could be offered in exchange for offsetting increases in productivity brought about by the removal of restrictive work practices of one kind or another.⁵² Although some of these agreements may tend to induce workers to accumulate obsolete work

rules that they can later trade for productivity increases, and others may have lost some of their original value because of the spurious nature of certain variations, their importance is not to be minimized. Clearly, such agreements have had the effect of turning collective bargaining into more of a two-way process, thereby inclining management to take more initiative than in the past. In terms of a viable incomes policy, however, neither this nor any other feature of the British experience has proven durable. As a result, Britain cannot be said today to have anything resembling a formal incomes policy, although she could again be driven to take some drastic steps in this direction in the near future. In the meantime, the Conservative Government is endeavouring to hold wage increases in the public service under ten per cent and, with somewhat less success, to encourage private employers to do likewise.

To date, other countries have employed less formal incomes policies than that of either Holland or Britain. Until recently, for example, Sweden has never really had a definitive incomes policy, although its framework bargaining has clearly been influenced by similar considerations.⁵³ As indicated earlier, however, this aspect of its bargaining system has been partially undermined by pressures stemming from wage drift and, more recently, from competing interest groups, both within and beyond the labour movement, vying for relative improvements in their respective positions. These and other considerations recently led the Swedish government to institute a partial price freeze, and to order a temporary return to work by a number of white-collar and professional groups in the public service who were striking primarily for higher pay. These measures could be construed as desperation short-term moves to stem the tide of inflation, or as the beginnings of a more comprehensive incomes policy.

Of all the countries surveyed, Germany has probably had the least explicit or formalized incomes policy.⁵⁴ Until the last year or so, major reliance appears to have been placed on aggregate fiscal and monetary policies, on informal pressures on the major parties of interest, and on the German people's much-vaunted fear of anything approaching the inflation they experienced in the interwar period. In the face of increasing inflationary pressures, and pursuant to the Growth and Stability Law of 1967, the government estab-

lished a Concerted Action Committee to serve as a forum to discuss the problem of rising prices and related issues. Having warned both labour and management of the growing risk of runaway inflation, the government went so far in the Concerted Action Committee as to suggest some appropriate wage and price criteria. With varying degrees of intensity, both parties reacted to this injection of something approaching guidelines, and chastised the government for not respecting the traditional independence of the social partners and the autonomy of collective bargaining. Temporarily at least, the government seemed taken aback by this hostility. Nonetheless, it has of late once again been stressing the need for appropriate wage and price responses, even though it continues to rely most heavily on conventional fiscal and monetary policies to cope with the situation.

Just as those Western European countries that have had the most formal incomes policies were experiencing the diminishing returns so often associated with such approaches,⁵⁵ Canada decided to embark on its relatively mild variation on the same theme. After considerable discussion of the issues involved,⁵⁶ and a special White Paper on the subject,⁵⁷ the federal government established the Prices and Incomes Commission with a mandate to research the underlying causes of inflation and to produce recommendations designed to cope with them. Not satisfied with this rather esoteric role, the Commission dramatically launched a guidelines program soon after its inception.⁵⁸ This was attempted despite the well-known reservations of the Economic Council of Canada⁵⁹ and the determined opposition of the labour movement. Despite misgivings, and perhaps largely for public relations purposes, industry agreed to cooperate with the Commission's endeavours. This qualified support did not prove enough, however, to offset the intransigence of the unions, and the guidelines have had to be abandoned. Although it is too early to assess the impact of this experience, the author is among those who are already convinced that it has done more harm than good.⁶⁰ Certainly, it is hard to believe that this is the most viable approach that could have been devised.

As in the case of Canada, it is not easy to determine the efficacy of the various incomes policies that have been tried in different countries. The evidence available to date suggests a mixed but es-

entially marginal record, a performance that may not warrant the social and related tensions that have been aroused in the process. If nothing else, the record of incomes policies to date indicates that they must be comprehensive if they are to command wide respect. Yet the wider their scope, the more difficult they are to interpret and administer, and the more incompatible they tend to become with western mixed free enterprise economic systems, based, as much as they still are, on the interaction of supply and demand in relatively unfettered markets.

Against these and other practical and philosophic difficulties, however, must be weighed the seriousness of the underlying factors leading to continuing inflationary pressures in many countries. Together with more formal and politically binding commitments by governments to the maintenance of full employment, the most fundamental problem remains the continuing inability of individuals, groups, and institutions to begin to agree on how to divide the national pie. Indeed, if anything, there has probably been an intensification of the scramble for a bigger share of the spoils. Moreover, the struggle is now more open and pronounced among, as well as within, various groups with supposedly common interests. Thus, in a very real sense, unions are fighting each other as much as they are management. So far, this has probably shown up most clearly in Sweden, where, despite continuing liaison and consultation in a number of other areas, the three major labour federations have clearly been at odds over the size of the differentials that should prevail among the distinctive types of workers they tend to represent. Aggravating this controversy lately has been the emphasis that the Central Organization of Swedish Professional Workers (SACO) has placed on after-tax wage and salary increases.⁶¹ If this type of conflict intensifies, the need for measures to contain the resulting pressures on the price level will grow in magnitude.

Short of deliberately driving up unemployment in an attempt to curb the forces of inflation, the answer would seem to lie in some sort of incomes policy. The problem is that these policies have thus far had a rather dismal record. In seeking a viable alternative, therefore, it is essential to see what can be gleaned from this past experience. In the first place, as already noted, this experience suggests that single-purpose incomes policies are no longer appropriate,

if indeed they ever were. Instead of employing such policies solely, or primarily, to stabilize prices, they must be used to pursue an appropriate mix of economic and social objectives. Moreover, in so far as incomes policies are designed to induce incomes restraint, that restraint must be directed towards all types of income. Otherwise, those restrained will balk at the restraints, if only because they feel they are discriminatory and hence unfair. Also to be noted is the need to avoid narrow mechanistic approaches, except in a crisis on an *ad hoc* basis, when nothing less will suffice. Instead, the emphasis probably has to be placed on a variety of weapons, starting with an appropriate combination of fiscal and monetary policies, in the absence of which the environment will hardly be conducive to the attainment of any desired set of objectives. In addition, at least judging by Canadian experience, there must be an effective pressure-point strategy, which combines anti-bottleneck measures, as in the form of an active labour market policy, with an anti-boat-rocking program aimed at dismantling untoward concentrations of economic power, or at building up offsetting countervailing forces. The challenge is to find a viable mix of strategies, giving rise to an acceptable combination somewhere in between a general North American-type free-for-all, which is intolerable, and total control, which is unworkable.

Whither Industrial Democracy? ⁶²

Industrial democracy comes in such a variety of conceptual packages that any kind of generalized analysis is difficult. In terms of labels alone, industrial democracy has been employed to describe everything from collective bargaining pure and simple to all manner of institutional arrangements designed to advance still further worker participation in management. To begin, there is a school of thought which holds that for practical purposes there is no more meaningful form of industrial democracy than collective bargaining itself.⁶³ This view is most widely held in North America,⁶⁴ but is found in Britain⁶⁵ and is not unknown on the continent.⁶⁶ In contrast are concepts of worker participation that go beyond the joint determination of wages, fringes and working conditions, especially in Western Europe where industrial democracy has ideological and political overtones not present in North America. The profu-

sion of concepts of worker participation could be construed to embrace such ideas as joint stock ownership and profit-sharing, although these are not included in this survey.

Beyond collective bargaining itself there are essentially three degrees of worker participation in management.⁶⁷ First, there is consultation which, at a minimum, implies an obligation on the part of management to consult with its workers or their representatives before taking any final decisions, in areas where it is bound, has agreed or feels morally committed to this process. Second, there is co-management or co-determination, which, in general, implies co-decision-making over a broader range of activities, if not over the entire managerial process. Finally, there is workers' control, which, in effect, entails the total transformation of an enterprise, from what at one extreme is a privately owned profit-making operation, seeking more than anything else to maximize shareholders' long-term return on their investment, to a neutral or cooperative kind of undertaking, presumably, but not necessarily, serving the public interest.

The first type of industrial democracy is epitomized by the works or workers' council movement in Europe.⁶⁸ Although, as indicated earlier, such councils sometimes serve in certain respects as the equivalent of local unions in North America, the analogy is far from perfect. On the one hand, works councils in Europe cannot strike, and generally have much less of a role in collective bargaining than local unions in North America, except where the latter are governed by a master agreement. On the other hand, such councils normally have more influence over non-negotiable issues, concerning which management is at least obliged to consult with them. In that regard, the closest parallel is probably to be found in Canada, where there is both a local union and a labour-management cooperation committee operating under Canada's Labour Management Cooperation Service.⁶⁹

However drawn, these types of comparisons are extremely hazardous. It is hard enough to contrast the record of works councils within and among the various European countries without trying to rate their general performance in relation to relevant North American developments. Nevertheless, despite the analytical problems involved, there is a tendency among those familiar with both North American and Western European industrial

relations systems to argue that North American workers are on the average better protected and served by their more structured local unions, their more comprehensive collective agreements, and their more elaborate and accessible grievance and arbitration procedures. That there is some validity to this assessment is suggested by the continuing efforts by Western European trade unionists to displace, take over, or at least better coordinate the activities of the works councils. It would seem that their outwardly more extensive consultative role does not offset their more limited bargaining power and that, on balance, they do not provide an adequate substitute for the more integrated union approach to management at all levels in the corporate hierarchy in North America. Both formally and informally, therefore, there is probably more reason to question the efficacy of the European works council approach than that of the alternative arrangements that prevail in North America. This being the case, one has to be sceptical about the degree of industrial democracy in the work place in Western Europe.

Of potentially greater comparative significance is the ongoing debate about co-determination, not only in Germany but also beyond its borders in the European Economic Community, and especially in Holland. The unique role of co-determination in Germany is to be explained by its own particular history and traditions.⁷⁰ The recent report of a special commission on co-determination has once again brought the issue to the fore.⁷¹ Although strongly endorsing the principle of co-determination, the Commission has proposed a modification of the coal and steel industries model. In the first place, it would reduce the number of worker representatives on the supervisory board from 50 to just under 50 per cent. Secondly, it would remove the workers' veto over one of the members of the management committee (which can be a body as small as three in number), an individual who, in practice though not in law, has normally assumed the functions of a North American personnel director. The net effect of these proposals in industries other than coal and steel would be to raise worker representation on company boards from one third to almost one half. In addition, the Commission recommended that workers' representatives on the boards be empowered to delay certain decisions by referring them to the works assembly

for an expression of opinion by the work force as a whole.

Opinion on these issues is sharply divided in Germany.⁷² Many employers and their leading spokesmen now accept the principle of co-determination, but want it limited to the pattern now current in general industry, where workers and their representatives in large enterprises have one third of the board membership. Employers would also prefer to confine that membership to their own employees, and they seem to have some support for this view among some work groups. The unions however, and particularly the German Federation of Labour (DGB), insist on some outside union representation, and on one or more neutral members, if only to avoid a syndicalist type of development. Another debatable point concerns the potential conflicts of interest to which workers' representatives may be subject. As a result, they have been vulnerable to criticism for becoming too management-oriented, and for putting corporate above employee interests. Also vulnerable to charges of a conflict of interest are the labour directors in the coal and steel industry, and in a few other enterprises that are subject to the same pattern. The dilemma in which they can be placed is reduced where bargaining is conducted on an industry-wide basis and the negotiations are in the hands of an employers' federation, although even then their role in administering the agreement at the firm or plant levels can give rise to serious conflicts.

Where the government will go on these and other issues remains to be seen. The only sure thing is that some form of what might most appropriately be described as "management by consent" is bound to survive in Germany.

Even more intriguing is the effect that German thinking in this area is having in other jurisdictions. Despite opposition from some of the other national trade union centres, the DGB has persuaded the European Confederation of Free Trade Unions to promote the concept of co-determination within the European Economic Community. So successful has it been that the EEC Secretariat proposals for a common European joint stock company law include a recommendation for one-third employee representation on the supervisory boards. Strenuous opposition is to be expected from the employer side, and, given the division in union

opinion on the subject, it is debatable how far the Council of Ministers will move in this direction.

A variation of the German approach is to be found in Holland, where a draft law dealing with this question was approved by the influential Social and Economic Council. If enacted by Parliament, this law will establish a procedure under which all future supervisory board members of major corporations will have to meet with the joint approval of the shareholders and the workers. To further help ensure a consensus-type board, it is provided that no management or labour representatives from an enterprise can be named to its board. Apparently the hope is that the composition of such boards will reflect a mixture of outside labour and management officials, as well as substantial neutral or public representation. The latter component is evidently intended to reduce the possibility of labour-management conflict or collusion, and to ensure more socially conscious corporate decision-making.

The most thoroughgoing form of worker participation is to be found in Yugoslavia, where a high degree of workers' control has been introduced. Although this particular experience falls outside the scope of this paper, it warrants attention if only because of its distinctiveness and the growing literature on it.⁷³ This literature suggests a mixed record to date, for reasons not unlike those described below in connection with less advanced schemes of workers' participation.

Related to the issue of industrial democracy is the continuing work of behavioural scientists in the fields of administration and motivation.⁷⁴ Their research into problems such as job dissatisfaction, alienation, and anomie is shedding increasing light on the place of workers' participation in the over-all managerial process. In the past, the human relations school became discredited because it so readily lent itself to manipulative techniques designed to give workers a "sense" of participation or a "feeling" of belonging. That danger is still present today, but perhaps is easier to recognize and thereby avoid. In any event, the work of some current behavioural scientists is producing a number of interesting findings on the reactions of workers to various forms of worker participation. What several of these studies are showing is that workers do not derive feelings of significant relevance or

satisfaction from having a few of their number serving as their representatives on deliberative or policy-making bodies quite removed from their work setting. Evidently, what happens at the supervisory board level, or even in works councils in large enterprises, is often just as remote from, and meaningless to, individual workers as the national bargaining which supposedly determines their wages and working conditions.

Not surprisingly, the thing that appears to matter more to workers is what happens in their departments or work units. It is in this context that several relatively new⁷⁵ and some comparatively old⁷⁶ experiments are of such interest. Most recently, the establishment of semi-autonomous work groups with considerable discretion in carrying out their assigned tasks has met with some success. At the same time evidence is continuing to accumulate indicating the effectiveness of such techniques as job enlargement and job enrichment.⁷⁷ Although in North America these approaches have been carried furthest in unorganized firms, and to that extent have become associated with programs of management resistance to trade unionism, this has not been the case in Northern Europe, where interest has in many instances been shared by employers and unions. This is especially evident in the Scandinavian countries, where groups of employers and unions are jointly experimenting with various approaches designed to make work more fulfilling and satisfying, and, consequently, more productive.

The findings of the behavioural sciences on these issues do not negate the advantages which can accrue from worker participation at higher levels in the enterprise. They do suggest that global involvement is no substitute for an effective voice at the shop floor level. Assuming this to be the case, those with a North American background and outlook can perhaps be forgiven the thought that collective bargaining as practised in North America, especially if combined with something like the Scanlon Plan,⁷⁸ could provide much of the answer to the problem. Against this view, however, must be set those trends, such as the growing significance of corporate decision-making and the increasing education of the labour force, which suggest that periodic collective bargaining may no longer suffice to meet the challenges of the day, even if combined with sophisticated techniques of job de-

sign,⁷⁹ and consultative or cooperative procedures in areas not covered by negotiations. In fact, increased worker participation at different levels may prove complementary and self-reinforcing.

The Challenge of the Multi-National Corporation⁸⁰

Historically, unions have evolved in response to the spread of both labour and product markets.⁸¹ They have had to do so in order to put an effective floor under wage competition. Starting from a local base, unions spread regionally, nationally, and, in one or two exceptional cases, even internationally.⁸² With the growth of the multi-national corporation, it must now be asked whether unions in the affected industries can settle for anything less than a parallel status.

International cooperation among unions has a long history. Both confederally, through a succession of competing international federations, and, more particularly, on an industry basis, through the International Trade Secretariats, national unions with common interests have been working together for many decades.⁸³ In some cases there has been real and meaningful cooperation, because of the closeness of the links among the various groups. This applies in particular to the International Transport Workers Federation, which has on occasion been instrumental in securing boycotts of struck ships and goods. More recently, the International Metalworkers Federation and the International Federation of Chemical and General Workers Unions have stepped up their activities. Information-sharing has become commonplace as, on a lesser scale, have international gatherings of union officials dealing with common employers. Even more significant have been the first signs of coordinated bargaining among unions dealing with the same firms in different countries. From a union point of view, the first tentative steps are clearly being taken in the direction of truly international collective bargaining, along the lines of the few instances that have developed between the United States and Canada on a binational basis.

Adding impetus to the union search for more effective ways of coming to grips with multi-national corporations is the increasing influence of regional economic trade blocs, such as the European Coal and Steel Community, the European Economic Com-

munity, and the European Free Trade Area. The reaction in each case has been the formation of parallel international federations of appropriate national groupings of both employers and unions. Although the resulting bodies have for the most part played an advisory role, there are increasing signs of varying degrees of labour-management interaction on a multi-national basis.⁸⁴ Within the EEC, for example, there are now a number of joint industry-wide consultative committees that could in time take on more and more of the trappings of international collective bargaining. Thus far resisted by management, there are mounting pressures in favour of such a development, and it is hardly likely that this can be avoided in the long run.

To date there has been remarkably little research into any of these developments. About all one can safely say is that intellectual interest is picking up in this area, which is bound to become one of the frontiers for research in industrial relations over the next decade.

Conclusion

Two points in conclusion: one returning to the recurrent theme in this paper, that was mentioned at the outset, the other pointing to some excellent prospects for future research.

As suggested at the beginning of this survey, there are conflicting centralizing and decentralizing forces at work in most of the areas discussed. Certainly, these contending sets of pressures have a lot to do with Britain's continuing preoccupation with reforms in its legal framework for the conduct of industrial relations. Obviously, similar considerations are the critical variables in any analysis of the outlook for the existing bargaining structures in different countries and, especially, for the more effective integration of the divergent parts of those structures. In practice, the same considerations are just as central to an examination of the past and future prospects for any type of incomes policies. Less clearly, they can be expected to have just as much of a bearing on the efficacy of various forms of industrial democracy. And finally, on an international scale, there is every reason to expect that various centripetal and centrifugal forces will also have much to do with the shape of any multi-national

bargaining arrangements that emerge in the future. Because of the recurring nature of this theme, it is probably reasonable to assert that attempts to reconcile the interplay of the different centralizing and decentralizing forces at work within and among individual industrial relations systems will preoccupy both students and practitioners for some time to come, whether they focus on this challenge directly or indirectly.

Turning to the second concluding point, it is inevitable that in any selective review of recent industrial relations developments, a number of issues are bound to be skipped over lightly or completely ignored. This paper suffers from several serious omissions. One concerns the general state of public service bargaining in Western Europe, which has already stimulated some books, monographs, and articles.⁸⁵ Another gap relates to the goal of harmonizing fringe benefits and other conditions of work for different classes of workers, which came to the fore in France after the 1968 general strike and which is also a major focal point in Belgium. The objective in each case has been to diminish the disparity between the treatment of white- and blue-collar workers, through programs based on guidelines that the parties are supposed to follow in their various levels and sets of negotiations. Not surprisingly, and as suggested earlier, such harmonization programs can give rise to intense rivalries among central federations of labour representing different types of workers. Even where this does not result in open conflict among such groups, it is bound to complicate the collective bargaining process.

Another interesting development revolves around the concept of "investment wages."⁸⁶ There is a growing interest on the continent in the idea of devoting a proportion of future wage increases to the funding of collective savings for investment purposes. There appear to be two major motivations behind the idea: first, it would serve to spread the ownership of private corporate wealth, and in this manner presumably tend to strengthen and stabilize the existing order; and second, it could conceivably help to curb inflation by reducing the portion of a particular year's increase in earnings that could be spent on current goods and services.

In conclusion it should be stressed that, relative to the situ-

ation in the United States, industrial relations in Western Europe and Canada remain woefully under-researched. This disparity will become all the more glaring as awareness spreads of some of the intriguing developments in Western Europe and Canada, particularly in continental Europe and in Quebec, that remain virtually unexplored.

Footnotes

¹ For comparatively recent information on industrial relations developments in each of these countries, the following publications are suggested. France: Allan Priaulx and Sanford J. Ungar, *The Almost Revolution: France—1968* (New York: Dell, 1969); Richard F. Hamilton, *Affluence and the French Worker in the Fourth Republic* (Princeton: Princeton University Press, 1967); Val R. Lorwin, *The French Labor Movement* (Cambridge: Harvard University Press, 1966); William H. McPherson and Frederic Meyers, *The French Labor Courts: Judgement by Peers* (Urbana: University of Illinois, Institute of Labor and Industrial Relations, 1966); and Leon A. Dale, *French Labor: A Bibliography* (New York: August M. Kelley, 1969). Italy: Daniel L. Horowitz, *The Italian Labor Movement* (Cambridge: Harvard University Press, 1963); Maurice F. Neufeld, *Labor Unions and National Politics in Italian Industrial Plants* (Ithaca: Cornell University, 1954); Maurice F. Neufeld, *Italy: School for Awakening Countries* (Ithaca: Cornell University, 1961); Joseph A. Raffaele, *Labor Leadership in Italy and Denmark* (Madison: University of Wisconsin Press, 1962); G. Giugni, "Recent Developments in Collective Bargaining in Italy," *International Labour Review*, Vol. 91 (January-June 1965), pp. 273-291. Spain: Fred Witney, *Labor Policy and Practices in Spain* (New York: Frederick A. Praeger, 1965); International Labour Office, *The Labour and Trade Union Situation in Spain* (Geneva, 1969). Denmark: Walter Galenson, *The Danish System of Labor Relations* (New York: Russel & Russel, 1969); Joseph A. Raffaele, *op. cit.* Norway: Herbert Dorfman, *Labor Relations in Norway* (Oslo: Ministry of Foreign Affairs, 1966); *The Trade Union Movement in Norway* (Oslo: The Norwegian Federation of Trade Unions, 1969).

² Among the more general reference works on Western European industrial relations in the past decade are the following: A. Kamin, ed., *Western European Labor and the American Corporation* (Washington: Bureau of National Affairs, 1969); E. M. Kassalow, *Trade Unions and Industrial Relations: An International Comparison* (New York: Random House, 1969); and P. Malles, *Trends in Industrial Relations Systems of Continental Europe* (Ottawa: Queen's Printer, Study No. 7, Task Force on Labour Relations, 1970). Briefer treatments are available in: A. Sturmfthal, *Labor Movements and Collective Bargaining in Europe*, University of Illinois Bulletin (1968); C. W. Summers, "Labor Relations in the Common Market," *Harvard Business Review*, Vol. 43 (March-April 1965), pp. 148-160; and E. J. Forsythe, "Collective Bargaining in Western Europe," *Labor Law Journal*, Vol. 14 (November 1963), pp. 919-934.

³ Illustrative of such studies are the following: D. Robinson, *Non-wage Incomes and Prices Policy, Trade Union Policy and Experience* (Paris: OECD, 1966); D. Robinson, *Wage Drift, Fringe Benefits and Manpower Distribution: A Study of Employer Practices in Full Employment Labour Markets* (Paris: OECD, 1968); *Scope and Methods of Collective Bargaining in the Iron and Steel Industry* (Geneva: ILO, 1963); and *Status and Duties of Workers' Representatives* (Geneva: ILO, 1960).

⁴ For excellent summaries of these contrasts, see C. W. Summers, "Labor Re-

lations and the Role of Law in Western Europe," and O. Fairweather, "Western European Labour Movements and Collective Bargaining: An Institutional Framework," in Alfred Kamin, ed., *op. cit.*, pp. 145-167 and pp. 69-92, respectively. Other sources of information on the broader characteristics of European industrial relations are: C. W. Summers, "Labor Relations in the Common Market," *op. cit.*; and R. P. Haveman, "Industrial Relations in the EEC," *Personnel Management*, Vol. 44 (June 1962), pp. 91-100. For further reference see O. Kahn-Freund, ed., *Labour Relations and the Law, A Comparative Study* (London: Stevens and Sons, 1965).

⁵ Wage drift can result from several conditions and can take many forms. One possible breakdown of the concept is the following. First, where piecework is prevalent, as is much more often the case in Western Europe than in North America, there may be a failure to adjust the standards in the event of improved technology, this is itself producing higher earnings. Second, as emphasized below, a shortage of labour may lead employers to bid against each other, above the agreed rates, in order to recruit and retain those types of workers that are in short supply. Third, this competitive bidding for labour may give rise to special bonuses or unusually high amounts of overtime, both of which can substantially raise workers' incomes. Fourth, where some workers do not receive the benefits of wage drift in any of the previous forms, they may be accorded more generous treatment simply to alleviate what one Britisher referred to as their "sense of disturbance." Finally, a minimum guaranteed wage drift may be included in the national agreements, as in Sweden, for those not benefiting from it in any other form, assuming the rest do so benefit. For further reference to this complex subject, see: B. Stein, "Incomes Policies in Western Europe: A Summary," *Labor Law Journal*, Vol. 16 (November 1965), pp. 717-724; B. Zoetewij, "Incomes Policies Abroad: An Interim Account," *Industrial and Labor Relations Review*, Vol. 20, No. 4 (July 1967), pp. 650-664; and S. Eskilsson, "The Wage Drift," Reprint from *Skandinaviska Banken Quarterly Review*, 1966.

⁶ These councils are discussed in more detail below, pp. 50-52. Excellent comparative analyses of such councils may be found in: A. Sturmthal, *Workers' Councils: A Study of Workplace Organization on Both Sides of the Iron Curtain* (Cambridge: Harvard University Press, 1964); and E. M. Kassalow, *op. cit.*, pp. 151-173.

⁷ One of the most concise sources of information on this topic is *Facts on Europe* (New York: Industrial Relations Counselors, Inc., 1966).

⁸ For comprehensive discussions of such courts, and the issues to which they give rise, see B. Aaron, ed., *Dispute Settlement Procedures in Five Western European Countries* (Berkeley, University of California, 1970) and B. Aaron, *Labor Courts: Western European Models and Their Significance for the United States* (Los Angeles: University of California, 1970). See also: O. Kahn-Freund, ed., *op. cit.* and the excellent series on labour law in various countries, *Labor Relations and the Law*, by Seyfarth, Shaw, Fairweather, and Geraldson. Other authoritative works include: Folke Schmidt, *Organization and Jurisdiction of the Labour Court in Sweden* (Stockholm: The Swedish Institute, 1967); J. De Givry and J. Schregle, "The Role of the Third Party in the Settlement of Grievances at the Plant Level," *International Labour Review*, Vol. 97, No. 4 (April 1968), pp. 333-350; and William H. McPherson and Frederic Meyers, *op. cit.*

⁹ *Royal Commission on Trade Unions and Employers' Associations 1965-1968* (London: Her Majesty's Stationery Office, 1968). Detailed summaries of the Commission's recommendations are available in: R. Kilroy-Silk, "The Royal Commission on Trade Unions and Employers' Associations," *Industrial and Labor Relations Review*, Vol. 22, No. 4 (July 1969), pp. 544-558; "Donovan Report on British Industrial Relations Reform," *Monthly Labour Review*, Vol. 91 (August 1968), pp. 44-50; N. Robertson and K. I. Sams, "Industrial Rela-

tions in Britain: Prospects for a New System," *Annals of Public and Co-operative Economy*, Vol. 40 (July-September 1969), pp. 265-283; and J. F. B. Goodman, "The Report of the Royal Commission on Trade Unions and Employers' Associations in Britain and Its Implications" *Journal of Industrial Relations*, Vol. 10 (November 1968), pp. 222-232.

¹⁰ Most of the written evidence has been published by H.M. Stationery Office on behalf of the Royal Commission (Minutes of Evidence Nos. 1-69). The written evidence of the Ministry of Labour and of the Chief Registrar of Friendly Societies was published by H. M. Stationery Office in separate volumes. Finally, a separate volume of Selected Written Evidence, known as "SWE," which is the written version of oral evidence given in public, is also available from H.M. Stationery Office.

¹¹ Research papers published by the Royal Commission include:

- (1) *The Role of Shop Stewards in British Industrial Relations*, by W. E. J. McCarthy
- (2) *Disputes Procedures in British Industry* (Part 1), by A. I. Marsh. *Disputes Procedures in Britain* (Part 2), by A. I. Marsh and W. E. J. McCarthy.
- (3) *Industrial Sociology and Industrial Relations*, by Alan Fox.
- (4) 1. *Productivity Bargaining*; 2. *Restrictive Labour Practices*. Written by the Commission's secretariat.
- (5) *Trade Union Structure and Government*, by John Hughes. Part 1: Structure and Development. Part 2: Membership Participation and Trade Union Government.
- (6) *Trade Union Growth and Recognition*, by George Sayers Bain.
- (7) *Employers' Associations: The Results of Two Studies*: 1. *The Functions and Organisation of Employers' Associations in Selected Industries*, by V. G. Munns. 2. *A Survey of Employers' Association Officials*, by W. E. J. McCarthy.
- (8) *Three Studies in Collective Bargaining*: 1. *Grievance Arbitration in the United States*, by Jack Stieber. 2. *Compulsory Arbitration in Britain*, by W. E. J. McCarthy. 3. *Check-off Agreements in Britain*, by A. I. Marsh and J. W. Staples.
- (9) *Overtime Working in Britain*, by E. G. Whybrew.
- (10) *Shop Stewards and Workshop Relations*, by W. E. J. McCarthy and S. R. Parker.
- (11) *Two Studies in Industrial Relations*: 1. *The Position of Women in Industry*, by Nancy Secar. 2. *Changing Wage Payment Systems*, by Robert B. McKersie.

¹² An excellent compendium of views on the Donovan Report is to be found in the special issue of the *British Journal of Industrial Relations* devoted to this subject. See "The Royal Commission on Trade Unions and Employers' Associations, 1965-1968: A Symposium," *British Journal of Industrial Relations*, Vol. 6, No. 3 (1968).

¹³ For example, in H. A. Turner, *Is Britain Really Strike-prone?*, University of Cambridge Department of Applied Economics, Occasional Papers, 1969, it is advanced that Britain's strike problem has been exaggerated. In developing this theme, the author states that one cannot prove that Britain is strike-prone because of the inadequacy of the relevant data, especially *vis à vis* other economies; further, the indirect effects of strikes on other sectors of the economy are still undefined. For an informed rebuttal, see W. E. J. McCarthy, "The Nature of Britain's Strike Problem," *British Journal of Industrial Relations*, Vol. 8, No. 2 (July 1970), pp. 224-236, which concludes that Turner's paper "represents no serious challenge to the analysis of the nature of Britain's strike problem in the Donovan Report."

¹⁴ By implication, at least, this was obviously the position of the Conservative Party in its first published reaction to the Donovan Report. See *Fair Deal at*

Work (London: Conservative Political Centre, April 1968), especially p. 6. Not surprisingly, this was also the view of the Confederation of British Industry, the CBI. For example, see C. Grunfeld, "Labor Relations and the Role of Law in Great Britain," in A. Kamin, ed., *op. cit.*, p. 203.

¹⁵ Alan Fox and Allan Flanders, "The Reform of Collective Bargaining: From Donovan to Durkheim," in *British Journal of Industrial Relations*, Vol. 7, No. 2 (July 1969), pp. 163-164.

¹⁶ For example, one concern, in J. F. B. Goodman, *op. cit.*, was that the weapons of "persuasion and publicity" with which the proposed Industrial Relations Commission was to be armed, were inadequate. Another, raised by N. Robertson and K. I. Sams, *op. cit.*, suggested that the Commission underestimated the extent of the strain on the resources of unions and management in the transition from one system of industrial relations to another.

¹⁷ Particularly biting in their criticisms were the editorial writers for the *Economist*.

¹⁸ *Fair Deal at Work*, *op. cit.*

¹⁹ See "Joint Statement by the Trades Union Congress and the Confederation of British Industry," in *Action on Donovan*, Trades Union Congress (London: Victoria House Printing Co., 1968), pp. 47-48.

²⁰ For example, in C. Grunfeld, *op. cit.*, p. 203, it is mentioned that "The CBI considered that the White Paper was too weak in its proposed legal regulation of trade unions' collective agreements and unofficial strike action . . ."

²¹ Two proposals of the Labour Government's White Paper, *In Place of Strife: A Policy for Industrial Relations* (London: Her Majesty's Stationery Office, 1969), are notable: one suggesting that the Secretary of State be enabled, by Order, to require those involved in an unconstitutional strike or lock-out to desist for up to 28 days; the other recommending that the Secretary of State be empowered, where an official strike is threatened, to require a secret ballot.

²² When the Labour Government's intentions were clear, the TUC convened a special conference of its affiliates to discuss the threatened curbs to their power. This resulted in a report, "Industrial Relations: A Programme for Action," *Times*, May 19, 1969, p. 3, which in June 1969 formed the *quid pro quo* of a settlement with the Government, i.e. in return for the abandonment by the Government of its proposed legislation, the TUC was to play a more interventionist role in employer-union and interunion disputes.

²³ *Fair Deal at Work*, *op. cit.*

²⁴ *Industrial Relations Bill: Consultative Document*, Department of Employment and Productivity, October 1970.

²⁵ The official title of the Rand Report is the *Royal Commission Inquiry into Labour Disputes* (Toronto: Queen's Printer, 1968); for a comprehensive summary, including the reactions of various interest groups, see *The Globe and Mail*, Toronto, September 6, 1968, various articles. The official title of the Woods Report is *Canadian Industrial Relations: The Report of the Task Force on Labour Relations* (Ottawa: The Queen's Printer, 1969); for a summary of this Commission's work, see G. Saunders and H. S. Roberts, *The Canadian Task Force on Labour Relations* (Honolulu: University of Hawaii, October 1969). For a partial bibliography of various reactions to the Woods Report, see *Industrial Relations/Relations Industrielles*, Vol. 25, No. 1 (January 1970), pp. 108-109.

²⁶ Aside from the Rand and the Woods Reports, the following reports come readily to mind: *Report of Industrial Inquiry Commission on Canadian National Railways "Run-Throughs"* (Ottawa: Queen's Printer, 1966), also known as the Freedman Report; *Report of Industrial Inquiry Commission on the Disruption of Shipping* (Ottawa: Queen's Printer, 1963), also known as the Norris Report; *Report of Swedish Labour Laws and Practices* (Vancouver: Printer to the Queen's Most Excellent Majesty, 1968), also known as the Nemetz Report;

Report of the Inquiry Commission on the St. Lawrence Ports (Ottawa: Queen's Printer, 1967), also known as the Picard Report; and the *Report of the Royal Commission on Labour-Management Relations in the Construction Industry* (Toronto: Queen's Printer, 1962), also known as the Goldenberg Report.

²¹ The Task Force, in particular, sponsored one of the most comprehensive research programs ever undertaken in the field of industrial relations in Canada. An outline of this program is to be found in Appendix J of the Task Force's final report. See *Canadian Industrial Relations: The Report of the Task Force on Labour Relations*, *op. cit.*, pp. 240-250. Among the more noteworthy studies published by the Task Force are: H. W. Arthurs, *Labour Disputes in Essential Industries*; Earl E. Palmer, *Responsible Decision-Making in Democratic Trade Unions*; Innis Christie *et al.*, *Unfair Labour Practices: An Exploratory Study of the Efficacy of the Law of Unfair Labour Practices in Canada*; P. C. Weiler, *Labour Arbitration and Industrial Change*; Shirley Goldenberg, *Professional Workers and Collective Bargaining*; G. L. Reuber, *Wage Determination in Canadian Manufacturing Industries*; and Stuart Jamieson, *Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900-66*. These and other studies published by the Task Force are available from the Queen's Printer, Ottawa, Canada.

²² For example, see: F. Bairstow, "A Canadian Approach to the Critical Issues in Industrial Relations," *The Australian Quarterly*, Vol. 41, No. 4 (December 1969), pp. 101-112; and A. Sturmthal, "Canadian Industrial Relations—the Task Force Report," *Industrial Relations/Relations Industrielles*, Vol. 24, No. 3 (October 1969), pp. 489-496. For a dissenting viewpoint, which is critical of the conceptual underpinning of the Task Force's findings, see J. T. Montague, "The Task Force Report," *Industrial Relations/Relations Industrielles*, Vol. 25, No. 1 (January 1970), pp. 12-20.

²³ See *Canadian Industrial Relations: A Statement by the Canadian Labour Congress on the Report of the Task Force on Labour Relations* (Ottawa: Mutual Press Ltd., 1969).

²⁴ See the *Brief to the Honourable Bryce Mackasey Concerning the Report of the Woods Task Force on Industrial Relations*, Toronto: The Canadian Chamber of Commerce, September 1969; and the *Submission of the Canadian Manufacturers' Association to the Minister of Labour with respect to the Task Force on Labour Relations*, Toronto, September 1969.

²⁵ For a detailed survey of the turbulent state of construction industrial relations in Canada, see H. Carl Goldenberg and John Crispo, eds., *Construction Labour Relations* (Toronto: Canadian Construction Association, 1968).

²⁶ For an exhaustive analysis of the concept of employer-association accreditation, see H. W. Arthurs and John Crispo, "Countervailing Employer Power: Accreditation of Contractor Associations," in H. Carl Goldenberg and John Crispo, eds., *op. cit.*, pp. 376-415.

²⁷ In Quebec, there are two major federations of labour: the Quebec Federation of Labour, which represents most of the national and international unions in the Province, and the Confederation of National Trade Unions, which represents a group of unions historically rooted in, and confined almost exclusively to, the Province.

²⁸ For more detail, see *Construction Industry Labour Relations Act* (Statute of 1968, Chapter 45), Province of Quebec.

²⁹ For informed comments on this new feature of Canadian industrial relations, see: J. J. Carson and J. Swanson, "Collective Bargaining in the Public Service and the Effect on the Private Sector," *Canadian Personnel Industrial Relations Journal*, Vol. 14, No. 3 (May 1967), pp. 11-21; J. Douglas Muir, "Canada's Experience with the Right of Public Employees to Strike," *Monthly Labor Review*, Vol. 92, No. 7 (July 1969), pp. 54-59; and A. M. Kruger, "The Right to Strike in the Public Sector: Canadian Legislation and Experience," *IRRA Spring Proceedings*, May 1970, pp. 455-463. For a more exhaustive treat-

ment, see H. W. Arthurs, *Collective Bargaining by Public Employees in Canada: Five Models* (Ann Arbor: The University of Michigan—Wayne State University, Institute of Labor and Industrial Relations, 1971).

³⁶ In particular, see H. Carl Goldenberg and John Crispo, *op. cit.*, pp. 648–670, for a summary of the problem areas of the construction industry.

³⁷ For summaries of the nature of the centralized bargaining arrangements in various European jurisdictions, see E. J. Forsythe, *op. cit.*; A. Sturmthal, *op. cit.*; and C. W. Summers, "Labour Relations and the Role of Law in Western Europe," in A. Kamin, ed., *op. cit.*, pp. 145–167. For a concise description of the relative size of the labour movements, the number of federations, rules concerning extension, and the areas covered by agreements concluded in European Economic Community countries, see L. H. J. Crijns, "Collective Bargaining in Nations of the European Economic Community," in A. Kamin, *op. cit.*, pp. 93–98.

³⁸ For a detailed treatment, see T. L. Johnston, *Collective Bargaining in Sweden* (Cambridge: Harvard University Press, 1962). Equally valuable, but briefer, descriptions may be found S. D. Anderman, "Central Wage Negotiations in Sweden: Recent Problems and Developments," *British Journal of Industrial Relations*, Vol. 5, No. 3 (November 1967), pp. 322–337; and Jean Mouly, "Wages Policy in Sweden," *International Labour Review*, Vol. 95, No. 3 (March 1967), pp. 166–201.

³⁹ For a comprehensive examination of Belgium's industrial relations system, see R. Blanpain, "Labor Relations in Belgium," in A. Kamin, *op. cit.*, pp. 209–252. Briefer treatments are available in "Belgium," *Labor Developments Abroad* (Washington: U.S. Government Printing Office, September 1969), pp. 13–14; and "Labor Conditions in Belgium," *Labor Digest*, No. 66, U.S. Department of Labor, 1965.

⁴⁰ Much literature exists on the nature of the Dutch arrangements for collective bargaining. Sources of information include: M. G. Levanbach, "The Law Relating to Collective Agreements in the Netherlands," in O. Kahn-Freund, ed., *op. cit.*, pp. 101–116; and M. P. Oettinger, "Incomes Policy in the Netherlands since 1945," *IRRA Proceedings* (December 1966), pp. 149–154. While the most detailed treatment is available in J. P. Windmuller, *Labor Relations in the Netherlands* (Ithaca: Cornell University Press, 1969), the most recent examination is to be found in W. Albeda, "Recent Trends in Collective Bargaining in the Netherlands," *International Labour Review* (March 1971), Vol. 103, No. 3.

⁴¹ For the first comprehensive treatment of this subject in English, see Paul Malles, *Economic Consultative Bodies: Their Origins and Institutional Characteristics* (Ottawa: Queen's Printer, 1971). Additional information is available in "Participation of Workers and Employers in Social and Economic Planning: Some Introductory Remarks," *International Labour Review*, Vol. 93, (January–June, 1966), pp. 331–336; and Jean-Jacques Bonnaud, "Participation by Workers' and Employers' Organizations in Planning in France," *International Labour Review*, Vol. 93 (January–June 1966), pp. 337–361. See also Guy Caire, "Participation by Employers' and Workers' Organizations in Planning," *International Labor Review*, Vol. 96 (July–December, 1967), pp. 557–580.

⁴² In E. J. Forsythe, *op. cit.*, p. 933, it is suggested that unless European unions undertake extensive programmes of reorganization, they may find their positions as worker representatives being usurped by works councils, internal commissions, and steward committees.

⁴³ On the basis of data drawn from the *Year Book of Labour Statistics* (Geneva: International Labour Office, 1967), the strike records of Germany, the Netherlands, and Sweden were vastly superior to those of Belgium, France, and the United Kingdom during the ten-year period ending 1966. One explanation for these discrepancies in levels of industrial unrest between the two groups of countries lies in the nature of their respective "peace obligations,"

i.e. this obligation is relatively more clearly defined in the former group of countries than in the latter.

"There is no dearth of literature on this topic, as the following list indicates: H. A. Turner and H. Zoetewij, *Prices, Wages, and Incomes Policies in Industrialized Market Economies* (Geneva: ILO, 1969); D. Robinson, *Non-wage Incomes*, *op. cit.*; D. C. Smith, *Incomes Policies: Some Foreign Experiences and Their Relevance for Canada* (Ottawa: Queen's Printer, 1966); A. Sturmthal, "Some Tentative Generalizations about European Incomes Policies," *IRRA Proceedings* (December 1966), pp. 106-115; M. W. Leiserson, "A Brief Interpretive Survey of Wage-Price Problems in Europe," *Study of Employment, Growth, and Price Levels* (Washington: U.S. Government Printing Office, 1959); D. Robinson, "Implementing an Incomes Policy," *Industrial Relations*, Vol. 8, No. 1 (October 1968), pp. 73-90; B. Zoetewij, *op. cit.*; J. Corina, "Can an Incomes Policy be Administered," *British Journal of Industrial Relations*, Vol. 5 (November 1967), pp. 287-310; L. H. J. Crijns, *op. cit.*; M. Edelman and R. W. Fleming, *The Policies of Wage-Price Decisions: A Four-Country Analysis* (Urbana: University of Illinois Press, 1965); B. Stein, *op. cit.*; F. W. Paish, *Policy for Incomes?* (London: Institute of Economic Affairs, 1968), especially Part 2: "Incomes Policies in Europe"; and D. Robinson, "National Wage and Incomes Policies and Trade Unions: Issues and Experiences," in S. Barkin *et al.*, eds., *International Labor* (New York: Harper & Row, 1967), pp. 216-246.

⁴⁵ W. Fellner *et al.*, *The Problem of Rising Prices* (Paris: OECD, 1961), Appendix on "Wage Determination in the Netherlands," pp. 359-390.

⁴⁶ For example, this was one of the points emphasized in an OECD treatment of incomes policies in *Policies for Price Stability* (Paris: OECD, 1962).

⁴⁷ See, for example, "European Incomes Policies," *Economist*, Vol. 225 (October 28, 1967), p. 414, wherein one of the three objectives of incomes policies is described as "achieving some kind of equity in incomes."

⁴⁸ By way of illustration, note the following extract from J. D. Neirinck, "Social Policy of the EEC," in A. Kamin, *op. cit.*, p. 43: "The primary argument for an income policy is the need to encourage formation of the capital essential for productive investment by increasing the workers' share in the national income."

⁴⁹ Holland's experience with incomes policy has been well documented by a number of observers, including: R. J. Bhatia *et al.*, "A System of Governmental Wage Control: Experience of the Netherlands, 1945-1960," *International Monetary Fund Staff Papers* (December 1961), pp. 353-379; M. Edelman and R. W. Fleming, *op. cit.*, "The Netherlands," pp. 220-278; F. Hartog, "Economic Policy in the Netherlands, 1949-1961," in Kirschen and Associates, eds., *Economic Policy in Our Time* (Amsterdam: North-Holland Publishing Co., 1964), Vol. 3, pp. 68-74; J. J. Klant, "Holland after the Wage Explosion," *The Banker* (January 1965), pp. 26-30; M. P. Oettinger, *op. cit.*; J. Pen, "The Strange Adventures of Dutch Wage Policy," *British Journal of Industrial Relations*, Vol. 2, No. 3 (October 1963), pp. 318-330; D. C. Smith, *op. cit.*, "Post-War Changes in Incomes Policy in the Netherlands," pp. 129-147; J. P. Windmuller, *op. cit.*; and W. Albeda, *op. cit.*

⁵⁰ For a short note on this development, see "Free Wage Policy Adopted," U.S. Department of Labor, *Labor Developments Abroad* (February 1968), pp. 18-19.

⁵¹ The British experience with incomes policies has been well recorded in: B. L. Davies, "Incomes Policy: The British Experience," *Labor Law Journal*, Vol. 18 (July 1967), pp. 427-439; L. Ulman, "British Incomes Policy," *Industrial Relations*, Vol. 6 (May 1967), pp. 213-284; E. H. Phelps-Brown, "British Incomes Experience," *Monthly Labour Review*, Vol. 89 (June 1966), pp. 634-637; R. B. McKersie, "Incomes Policy in Great Britain," *IRRA Proceedings* (December 1966), pp. 139-148; and H. A. Turner, "Collective Bargaining and

the Eclipse of Incomes Policy: Retrospect, Prospect and Possibilities," *British Journal of Industrial Relations*, Vol. 8, No. 2 (July 1970), pp. 197-212. For an excellent summary of the "rise and fall" of the National Board for Prices and Incomes during the period April 1965 through July 1970, see "The Wages Debacle," *The Economist* (January 24, 1970), p. 47.

²³ For details see: Research Papers of the Royal Commission on Trade Unions and Employers' Associations, *Productivity Bargaining*, *op. cit.*; National Board for Prices and Incomes, *Productivity Agreements*, Cmnd. 3311 (HMSO, 1968); A. Flanders, *Collective Bargaining: Prescription for Change* (London: Faber & Faber, 1967); D. T. North et al., *Productivity Agreements and Wage Systems* (London: Gower Press, 1969); N. Stettner, *Productivity Bargaining and Industrial Change* (London: Pergamon Press, 1969); and National Board for Prices and Incomes, *Productivity Agreements*, Report No. 123 (London: Cmnd. 4136, 1969).

²⁴ See D. C. Smith, *op. cit.*, "Sweden: A Case of No Official Incomes Policy," pp. 151-171; and G. Edgren, K. Faxen, and C. Odhner, "Wages, Growth and the Distribution of Income," reprinted from *Ekonomisk Tidskrift* (the Swedish Journal of Economics), 1969. With regard to the latter, it is particularly significant that it was written jointly by representatives of labour and management.

²⁵ Activity along the incomes front in Germany has relied heavily on the technique of persuasion; with regard to prices, the policy of least interference has generally been pursued. For a brief description, see *Economic Policy in Practice* (The Hague: International Information Centre for Local Credit, March 1968), p. 100 ff.

²⁶ For critical assessments of the results of various approaches to incomes policy, see: E. M. Kassalow, "National Wage Policies: Lessons to Date, Europe and the U.S.A.," *IRRA Proceedings* (December 1966), pp. 125-138; B. Zoetewij, "Incomes Policies Abroad: An Interim Account," *op. cit.*; and L. Ulman, *Wage-Price Policies: Some Lessons from Abroad*, Reprint No. 333 (Berkeley: Institute of Industrial Relations, 1969).

²⁷ For example, see: Economic Council of Canada *Third Annual Review: Prices, Productivity and Employment* (Ottawa: Queen's Printer, 1966); and D. C. Smith, *op. cit.*, especially pp. 185-207.

²⁸ *Policies for Price Stability* (Ottawa: Queen's Printer, December 1968).

²⁹ See the *News Release* of the Prices and Incomes Commission, Canada, dated Wednesday, August 6, 1969.

³⁰ *Third Annual Review*, Economic Council of Canada, *op. cit.*

³¹ See John Crispo, "Guidelines and Inflation: Fact and Fantasy," *The Business Quarterly*, Vol. 35, No. 3 (Autumn 1970), pp. 70-74. See also B. Brody, "16 Questions for the Prices and Incomes Commission," *Le Devoir*, June 25, 1970; G. L. Reuber, *Incomes Policy: Canada's Experiment with Organized Voluntarism to Curb Price Inflation* (London, Ontario: The University of Western Ontario, March 1970) Mimeographed; and A. W. R. Carrothers, *Is There a Future for Collective Bargaining?* (Calgary: The University of Calgary, February 22, 1970) Mimeographed.

³² In this regard, see Everett M. Kassalow, "Professional Unionism in Sweden," *Industrial Relations*, Vol. 8, No. 2 (February 1969), pp. 119-134.

³³ For general reference material on this topic, see: P. Blumberg, *Industrial Democracy: The Sociology of Participation* (London: Constable, 1968); F. Wilken, *The Liberation of Work* (London: Routledge & Kegan, 1969); "A Symposium: Workers' Participation in Management: An International Comparison," *Industrial Relations*, Vol. 9, No. 2 (February 1970), pp. 117-214; K. F. Walker, "Workers' Participation in Management: Concepts and Reality," Geneva: Mimeographed Paper for the Second World Congress of the International Industrial Relations Association, 1970; F. J. Stendenbach, "Industrial Democracy—a Contemporary Need," Paris: Mimeographed Position Paper for an International Seminar sponsored by the Trade Union Advisory Committee to

OECD, September 1969; A. Sturmthal, *Workers' Councils*, *op. cit.*; and R. W. Cox, "A Fruitful Field for Enquiry," K. F. Walker, "The Concept and Its Implementation," and L. G. de Bellecombe, "A Research Project," in *International Institute for Labour Studies Bulletin* (February 1967), pp. 64-125. For the views of a group of Canadian advocates of industrial democracy, see *Industrial Democracy* (Toronto: Ontario Woodsworth Memorial Foundation and Praxis Research Institute for Social Change, 1970).

⁵⁰ The historical roots of this viewpoint trace back to the Webbs and their famous work on industrial democracy. See Sidney and Beatrice Webb, *Industrial Democracy* (London: Longmans, 1897).

⁵¹ In A. Sturmthal, "Industrial Democracy in the Affluent Society," *IRRA Proceedings* (December 1964), pp. 270-279, the author reviews the various attempts that have been made to introduce industrial democracy. His conclusion is that participation beyond the consultative level is quite rare. American unions, suspicious that involvement in managerial responsibilities causes a reduction of union power at the plant level, have largely rejected the precepts of industrial democracy in favour of collective bargaining. For further reference, see Milton Derber, *The American Idea of Industrial Democracy 1865-1965* (Urbana: University of Illinois Press, 1970).

⁵² For example, see H. A. Clegg, *A New Approach to Industrial Democracy* (Oxford: Blackwell, February 1960). It is also significant to note that a majority of the commissioners on the recent Royal Commission, *op. cit.*, felt unable to recommend the appointment of worker directors to the boards of companies, pp. 257-260.

⁵³ Perhaps one of the most concise and current works on this is G. Strauss and E. Rosenstein, "Workers' Participation: A Critical View," in *Industrial Relations*, Vol. 9, No. 2 (February 1970), pp. 197-214. The broad conclusion of the authors is that industrial democracy has not worked, since it has not afforded power to the ordinary worker. They seem to be advancing the notion of the semi-autonomous work group as an alternative when they note: "There is reason to doubt whether vicarious participation, through representatives, in setting over-all company or personnel policies, will have the same impact as direct participation in determining how to do one's own work." p. 213.

⁵⁴ For a more sophisticated breakdown, see Kenneth F. Walker, *op. cit.*

⁵⁵ For further reference, see A. Sturmthal, *Workers Councils*, *op. cit.*; and the "Symposium," *Industrial Relations*, *op. cit.*

⁵⁶ The significance of these labour-management cooperation committees should not be exaggerated. Such committees are not that important, either numerically or in terms of their scope and influence. For further reference, see W. Donald Wood, "The Current Status of Labour-Management Co-operation in Canada," in *National Conference on Labour Management Relations* (Ottawa: Queen's Printer, 1965).

⁵⁷ For further detail, see: W. H. McPherson, *Codetermination in Practice* (Urbana: University of Illinois Bulletin, 1955); A. Suchman, "Economic Rationale of Codetermination," *Industrial and Labor Relations Review*, January 1957; M. P. Fogarty, "Codetermination and Company Structure in Germany," *British Journal of Industrial Relations*, Vol. 2, No. 1 (March 1964), pp. 79-113; H. H. Freundt, "Codetermination—Germany's Industrial Democracy," *Search for Industrial Peace at Home and Abroad* (Loretto: St. Francis College, October 10, 1969); "Extension of Codetermination Demanded by Labour," *Labour Developments Abroad* (Washington: U.S. Government Printing Office, November 1968), pp. 8-9; and F. Furstenberg, "Workers' Participation in Management in the Federal Republic of Germany," *International Institute for Labour Studies Bulletin*, No. 4 (June 1969), pp. 94-148.

⁵⁸ In German, this report was entitled *Sachverständigen Kommission Mitbestimmung in Unternehmen* (Bundestag, Drucksache, 6-334, 1970).

⁵⁹ For an assessment of the positions of various interest groups on codetermi-

nation in West Germany, see: H. Hartmann, "Codetermination in West Germany," *Industrial Relations*, Vol. 9, No. 2 (February 1970), pp. 137-147.

⁷³ For example, see J. Kolaja, *Workers' Councils: The Yugoslav Experience* (London: Tavistock Publications, April 1, 1965); F. Singleton, *Workers' Control in Yugoslavia* (London: Fabian Society, 1963); V. Rus, "Influence Structure in Yugoslav Enterprise," *Industrial Relations*, Vol. 9, No. 2, op. cit., pp. 148-160; and Roy Moore, *Self Management in Yugoslavia* (London: Fabian Society, 1970).

⁷⁴ For an excellent review of the work of the behaviouralists from the time of the Hawthorne studies through to Maier, Lewin, Thelan, Bion, Trist, and Emery (covering such topics as the human relations approach, T-groups, and socio-economic systems), see M. Bucklow, "A New Role for the Work Group," *Administrative Science Quarterly*, Vol. 11 (1966), pp. 59-78. Other sources of information on motivation, the work of the Tavistock Institute, and the work of the University of Oslo include: B. Carroll, *Job Satisfaction: A Review of the Literature* (Ithaca: Cornell University, 1969); R. Cooper and M. Foster, *Job Characteristics and Motivation* (London: Tavistock Institute of Human Relations, April 1969); and D. Jenkins, "Industrial Democracy," *Sweden Now*, January-February, 1970, pp. 32-35.

⁷⁵ One intriguing example of recent work in the field is the study of the Tavistock Institute of the problems arising from the mechanization of the British coal industry. The findings were quite dramatic in that they clearly indicated that lowered production standards resulted from the dilution of jobs, the scheduling and cycling of which were taken out of the hands of the miners. After reorganizing the operation on the principle of a "composite work organization," the Tavistock group "later found that with still higher levels of mechanization, the work organization that best fitted the new technology again had much in common with the earlier unmechanized system." See M. Bucklow, *op. cit.*, p. 72. Similar results were reported in a more recent experiment at the Orrefors Glass Works in Sweden, which attempted to test the same theory, i.e. that self-governing groups with enlarged jobs would be more efficient. See D. Jenkins, *op. cit.* For further reference, see "Research Into New Forms of Work Organization," *The OECD Observer*, No. 45 (April 1970), pp. 37-39.

⁷⁶ For a review of the work of the Hawthorne group and later theorists who ushered in the "human relations" approach to management, see M. Bucklow, *op. cit.* Other more specific references include: Elton Mayo, *The Human Problems of an Industrial Civilization* (New York: The Viking Press, 1960); and F. J. Roethlisberger and W. J. Dickson, *Management and the Worker* (Cambridge: Harvard University Press, 1966). A critical evaluation of the Hawthorne work is available in H. A. Landsberger, *Hawthorne Revisited* (Ithaca: W. F. Humphrey Press, Inc., 1958).

⁷⁷ In particular, see C. Hulin and M. Blood, "Job Enlargement, Individual Differences and Worker Responses," *Psychological Bulletin*, Vol. 69, No. 1 (1968), pp. 41-55, for a comprehensive review of the literature relating to the tenets of the "job-enlargement" school.

⁷⁸ A description of the plan is available in F. G. Lesieur, *The Scanlon Plan: A Frontier in Labor-Management Cooperation* (Cambridge: The M. I. T. Press, 1958).

⁷⁹ See, for example, Sidney A. Fine, "Role of Job Design in Workers' Participation in Management," a paper prepared for the Second World Congress of the International Industrial Relations Association (Washington: The W. E. Upjohn Institute for Employment Research, 1970), Mimeographed, 14 pp.

⁸⁰ Although an increasing amount is being written about multinational corporations, thus far little of it pertains to their impact on trade unionism and collective bargaining. Among the more general works on these corporations are the following: C. P. Kindelberger, ed., *The International Corporation* (Cambridge: The M. I. T. Press, 1970); and J. N. Behrman, *National Interests*

and the *Multinational Enterprise* (New Jersey: Prentice-Hall, 1970). As for the industrial relations ramifications of the multinational corporation, only a few useful references are available. See, in particular Paul Malles, "The Multinational Corporation and Industrial Relations: The European Approach," Annual Conference of the Canadian Industrial Relations Research Institute (Ottawa: June 18-19, 1970), Mimeographed; and J. C. Shearer, "Industrial Relations of American Corporations Abroad," in S. Barkin *et al.*, *op cit.*, pp. 109-131. Additional material on this subject is to be found in such international trade union journals as the ICF (International Federation of Chemical and General Workers' Unions) *Bulletin*; various IMF (International Metalworkers' Federation) publications; and the ICFTU (International Confederation of Free Trade Unions) *Economic and Social Bulletin*.

⁸¹ For a review of this growth process in North America, see L. Ulman, eds., *The Rise of the National Trade Union* (Cambridge: Harvard University Press, 1955).

⁸² See John Crispo, *International Unionism: A Study in Canadian-American Relations* (Toronto: McGraw-Hill, 1967).

⁸³ For further reference, see J. Windmuller, *Labor Internationals: A Survey of Contemporary International Trade Union Organization*, Cornell University, Bulletin No. 61, 1969; and J. Windmuller, "Internationalism in Eclipse: The ICFTU after Two Decades," *Industrial and Labor Relations Review*, Vol. 23, No. 4 (July 1970), pp. 510-527.

⁸⁴ See, for example: R. Colin Beever, *Trade Unions and Free Labour Movement in the EEC* (London: Chatham House and PEP, 1969).

⁸⁵ For a concise treatment of public sector bargaining arrangements in a number of European countries, see Public Services International, *Negotiating Rights of Public Servants and the Right to Strike in the Public Service* (London: 1966). See also Everett M. Kassalow, "Public Employee Bargaining in Europe: What Lessons for the United States," *IRRA Proceedings* (December 1968), pp. 48-58.

⁸⁶ For example, see "Asset Formation" in ICF *Bulletin* (July-August 1970 and January-February 1971). See also "Switzerland: Financial Participation of Employees in an Undertaking," *International Labour Review*, Vol. 92 (July-September 1965), pp. 68-69; OECD, *Workers' Negotiated Savings Plans for Capital Formation: Final Report* (Paris: Manpower and Social Affairs Directorate, 1970); OECD, *Negotiated Workers' Savings Plans for Capital Formation: Supplement to the Final Report* (Paris: Manpower and Social Affairs Directorate, 1968); and Jean de Givry, "Developments in Labour-Management Relations in the Undertaking," *International Labour Review*, Vol. 99 (January-June 1969), pp. 1-33.

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